91-06-21

Bill No. X- (As Amended)

ANNEXATION ORDINANCE NO. X- 06-91

AN ORDINANCE annexing certain territory commonly known as the Walden Annexation Area to Fort Wayne and including the same in Councilmanic District No. 2.

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the following described territory be and the same is hereby annexed to, and made a part of, the corporation of the City of Fort Wayne, Indiana, to-wit:

Part of the Southeast Quarter of Section 28, Township 31 North, Range 13 East, and part of the Northeast Quarter of Section 33, Township 31 North, Range 13 East, Allen County, Indiana more particularly described as follows:

Beginning at the intersection of the south right of way line of Trier Road and the east line of the Southeast Quarter of Section 28, Township 31 North, Range 13 East; thence East along the south right of way line of said Trier Road to the west right of way line of Maplecrest Road; thence South along the west right of way line of Maplecrest Road to a point 450 feet south of the north line of the Northeast Quarter of Section 33, Township 31 North, Range 13 East, said point being on the North line of "The Hollows" Subdivision, Section 1 as recorded in Plat Book 41, Pages 31-35 in the Office of the Recorder of Allen County, Indiana; thence west along the north line of said Hollows subdivision (said north line also being the southerly line and its easterly extension of Walden Addition, Section 5 as recorded in Plat Book 38, Pages 44-47) to a point on the easterly line of an Indiana and Michigan Power Company right of way (said point also being the northwest corner of Lot 25 in said Hollows subdivision); thence north along said Indiana and Michigan easterly right of way line to the South line of the Southeast Quarter of said Section 28; thence West along the south line of said Southeast Quarter of Section 28 (said south line also being the south line of Walden Addition, Section 2 as recorded in Plat Book 36, Pages 20-24, in the Office of the Recorder) to the east line of the Southeast Quarter of said Section 28; thence North along said East line of said Southeast Quarter to the Point of Beginning containing 174 Acres more or less.

SECTION 2. That the City of Fort Wayne will furnish the above described territory within a period of one (1) year from the effective date of annexation, planned services of a non-capital nature, including police protection, fire protection, and street and road

maintenance, in a manner which is equivalent in standard and scope to those non-capital services provided to areas within the City of Fort Wayne which have similar topography, patterns of land utilization and population density to the said described territory. The City of Fort Wayne will also provide services of a capital improvement nature, including street construction, street lighting, sewer facilities, water facilities and stormwater drainage facilities to the annexed territory within three (3) years of the effective date of annexation, in the same manner as such services are provided to areas already in the City of Fort Wayne with similar topography, patterns of land utilization and population density, and in a manner consistent with federal, state and local laws, procedures and planning criteria.

SECTION 3. That governmental and proprietary services will be provided to the above described territory in a manner consistent with the written Fiscal Plan for the territory developed by the Division of Community and Economic Development. Said Plan was examined by the Common Council of the City of Fort Wayne and is approved and adopted by the Common Council by and upon the passage of this Ordinance. Two copies of said plan are on file in the office of the Clerk of the City of Fort Wayne and are available for inspection as required by law.

SECTION 4. That said described territory shall be temporarily assigned to Councilmanic Political Ward No. 2 of the City of Fort Wayne, Indiana, as described in Division I, Section 2-9 of Chapter 2 of the Municipal Code of the City of Fort Wayne, Indiana of 1974, as amended. This assignment is subject to redistricting pursuant to I.C. 36-4-6-3 (g).

SECTION 5. That, after adoption and any and all

Read the first time in full and on motion by Bradbury, seconded by Redd, and duly adopted, read the second time by title and referred to the Committee on Annexation (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at ~~the Council Conference Room 128, City~~-County Building, Fort Wayne, Indiana, on _____, the _____, day of _____, 19____, at _____ o'clock ____.M.,E.S.T.

DATED: 6-11-91.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Long, seconded by Edmonds, and duly adopted, placed on its passage. PASSED ~~LOST~~ by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
TOTAL VOTES	9			
BRADBURY	✓			
BURNS	✓			
EDMONDS	✓			
GiaQUINTA	✓			
HENRY	✓			
LONG	✓			
REDD	✓			
SCHMIDT	✓			
TALARICO	✓			

DATED: 10-22-91

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ANNEXATION) (~~APPROPRIATION~~) (GENERAL) (~~SPECIAL~~) (~~ZONING MAP~~) ORDINANCE ~~RESOLUTION~~ NO. X-06-91 on the 22nd day of October, 19 91,

ATTEST: Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

SEAL
Samuel J. Talarico
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 23rd day of October, 19 91, at the hour of 2:30 o'clock P.M.,E.S.T.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 23d day of October, 19 91, at the hour of 3:30 o'clock P.M.,E.S.T.

PAUL HELMKE, MAYOR

necessary approval by the Mayor, this Ordinance shall be published as provided for in I.C. 36-4-3-7. The above described territory shall become part of the City of Fort Wayne on February 28, 1992. In the event of litigation challenging the ordinance, the territory shall become part of the City on the first 28th day of February following any final judicial decisions resolving any legal challenge to the ordinance in favor of the City.

COUNCILMEMBER

APPROVED AS TO FORM AND LEGALITY

J. TIMOTHY McCAULAY, CITY ATTORNEY

Bill No. X-91-06-21

ANNEXATION ORDINANCE NO. X- _____

AN ORDINANCE annexing certain territory commonly known as the Walden Annexation Area to Fort Wayne and including the same in Councilmanic District No. 2.

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the following described territory be and the same is hereby annexed to, and made a part of, the corporation of the City of Fort Wayne, Indiana, to-wit:

Part of the Southeast Quarter of Section 28, Township 31 North, Range 13 East, and part of the Northeast Quarter of Section 33, Township 31 North, Range 13 East, Allen County, Indiana more particularly described as follows:

Beginning at the intersection of the south right of way line of Trier Road and the east line of the Southeast Quarter of Section 28, Township 31 North, Range 13 East; thence East along the south right of way line of said Trier Road to the west right of way line of Maplecrest Road; thence South along the west right of way line of Maplecrest Road to a point 450 feet south of the north line of the Northeast Quarter of Section 33, Township 31 North, Range 13 East, said point being on the North line of "The Hollows" Subdivision, Section 1 as recorded in Plat Book 41, Pages 31-35 in the Office of the Recorder of Allen County, Indiana; thence west along the north line of said Hollows subdivision (said north line also being the southerly line and its easterly extension of Walden Addition, Section 5 as recorded in Plat Book 38, Pages 44-47) to a point on the easterly line of an Indiana and Michigan Power Company right of way (said point also being the northwest corner of Lot 25 in said Hollows subdivision); thence north along said Indiana and Michigan easterly right of way line to the South line of the Southeast Quarter of said Section 28; thence West along the south line of said Southeast Quarter of Section 28 (said south line also being the south line of Walden Addition, Section 2 as recorded in Plat Book 36, Pages 20-24, in the Office of the Recorder) to the east line of the Southeast Quarter of said Section 28; thence North along said East line of said Southeast Quarter to the Point of Beginning containing 174 Acres more or less.

The boundaries of said territory are those outlined in the location map designated Walden Annexation, two copies of

which are on file in the office of the Clerk of the City of Fort Wayne and available for public inspection as provided by law.

SECTION 2. That the City of Fort Wayne will furnish the above described territory within a period of one (1) year from the effective date of annexation, planned services of a non-capital nature, including police protection, fire protection, and street and road maintenance, in a manner which is equivalent in standard and scope to those non-capital services provided to areas within the City of Fort Wayne which have similar topography, patterns of land utilization and population density to the said described territory. The City of Fort Wayne will also provide services of a capital improvement nature, including street construction, street lighting, sewer facilities, water facilities and stormwater drainage facilities to the annexed territory within three (3) years of the effective date of annexation, in the same manner as such services are provided to areas already in the City of Fort Wayne with similar topography, patterns of land utilization and population density, and in a manner consistent with federal, state and local laws, procedures and planning criteria.

SECTION 3. That governmental and proprietary services will be provided to the above described territory in a manner consistent with the written Fiscal Plan for the territory developed by the Division of Community and Economic Development. Said Plan was examined by the Common Council of the City of Fort Wayne and is approved and adopted by the Common Council by and upon the passage of this Ordinance. Two copies of said plan are on file in the office of the Clerk of the City of Fort Wayne and are available for inspection as required by law.

SECTION 4. That said described territory shall be a part of Councilmanic Political Ward No. 2 of the City of Fort Wayne, Indiana, as described in Division I, Section 2-9 of Chapter 2 of the Municipal Code of the City of Fort Wayne, Indiana of 1974, as amended.

SECTION 5. That, after adoption and any and all necessary approval by the Mayor, this Ordinance shall be published as provided for in I.C. 36-4-3-7. The above described territory shall become part of the City of Fort Wayne on December 31, 1991.

Janet G. Bradbury
COUNCILMEMBER

APPROVED AS TO FORM AND LEGALITY

J. Timothy McCaulay
J. TIMOTHY MCCAULAY, CITY ATTORNEY

MEMORANDUM

TO: GARY STAIR

FROM: J. TIMOTHY McCAULAY, CORPORATION COUNSEL

DATE: MAY 30, 1995

RE: WALDEN ANNEXATION

Enclosed please find a copy of the May 23, 1995 decision by the Indiana Supreme Court to deny transfer of the challenge of the City of Fort Wayne Annexation Ordinance X-06-91 (Walden Annexation).

Pursuant to the terms of the ordinance, this annexation becomes effective February 28, 1996. Please alert service providers to plan for the provision of service to the Walden area as of February 28, 1996, and to prepare their budgets for the year 1996 accordingly.

In addition, please see that the filing and recording of the ordinance and certified copy of the judgment are done as required by I.C. 36-4-3-22.

Your staff deserves considerable credit for the assistance they provided the Law Department in the trial of this annexation action on the merits.

CC: Paul Helmke
Greg Purcell
Pam Holocher
Nancy Townsend

STATE OF INDIANA

H. JOHN OKESON
CLERK OF THE SUPREME COURT,
COURT OF APPEALS AND TAX COURT

217 STATE HOUSE
INDIANAPOLIS, IN 46204

(317) 232-1930
FAX (317) 232-8365

JOHN MCCAULAY

300 METRO BLDG.
FORT WAYNE, IN 46802

Cause Number
02A03-9403-CV-00129
Lower Court Number:
02D019112CP2699

ANNEXATION ORDINANCE NUMBER X0691 -V- CITY OF FT. WAYNE

You are hereby notified that the SUPREME COURT has on this day 5/23/95
APPELLANTS' PETITION FOR TRANSFER IS HEREBY DENIED.
RANDALL T. SHEPARD, CHIEF JUSTICE
ALL JUSTICES CONCUR.

KA

WITNESS my name and the seal of said Court,
this 23RD day of MAY, 1995

W. John Okeson

Clerk Supreme Court, Court of Appeals and Tax Court

49

The City of Fort Wayne

Paul Helmke, Mayor

TO: Nadka Eshcoff

FROM: Pamela Holocher

RE: Walden Annexation, Ordinance X-06-91

DATE: June 27, 1995

Per I.C. 36-4-3-22, please note that the annexation above was approved by the Common Council of Fort Wayne on **October 22, 1991.** The annexation was duly published on October 28, 1991, and November 4, 1991. I have also attached a certified copy of the judgement as required by I.C. 36-4-3-22. Both of these documents need to be recorded in accordance with the above noted State Statute.

PLEASE NOTE THAT THIS ANNEXATION DOES NOT BECOME EFFECTIVE UNTIL **FEBRUARY 28, 1996,**

If you have any questions concerning this annexation, please contact me at 427-1140 or 427-2139. Thanks!

FOR
PUBLICATION

ATTORNEY FOR APPELLANT:

JOHN M. CLIFTON, JR.
Barrett & McNagny
Fort Wayne, IN 46801

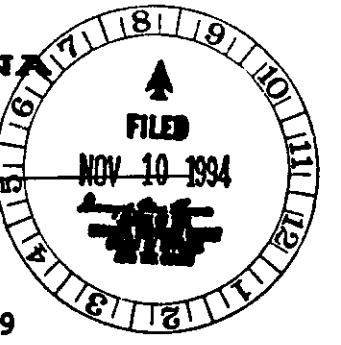
ATTORNEY FOR APPELLEE:

J. TIMOTHY MCCAULAY
City of Fort Wayne Department
of Law
Fort Wayne, IN 46802

IN THE

COURT OF APPEALS OF INDIANA

THIRD DISTRICT



IN THE MATTER OF THE ANNEXATION PROPOSED BY ANNEXATION ORDINANCE NUMBER X-06-91 BEING AN ORDINANCE TO ANNEX CERTAIN TERRITORY TO THE CITY OF FORT WAYNE AND TO INCLUDE SAME IN COUNCILMANIC DISTRICT NUMBER 2 (WALDEN ANNEXATION)	No. 02A03-9403-CV-129

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Paul Mathias, Judge
Cause No. 02D01-9112-CP-2699

STATON, J.

OPINION
FOR PUBLICATION

Walden area residents ("Remonstrators") appeal the trial court's order overruling their remonstrance to the city of Fort Wayne's ("City") proposed annexation of their neighborhood. Remonstrators present one issue for our review, which we separate into six and restate as follows:

I. Whether the City is statutorily precluded from implementing Annexation Ordinance X-06-91.

II. Whether the City's actions constitute harassment, bad faith or vexatious conduct precluding it from implementing the annexation ordinance.

III. Whether amendments to the proposed fiscal plan prior to passage of the annexation ordinance resolution deprived landowners of notice of the plan's contents.

IV. Whether errors in the legal description contained in the ordinance render it so defective as to preclude annexation, and reformation thereof by the trial court was improper.

V. Whether the trial court erred in determining that Annexation ordinance X-06-91 complied with the statutory requirements of annexation.

VI. Whether the trial court erred in finding that the annexation ordinance was not implemented by the City solely to raise tax revenue.

We affirm.

The facts most favorable to the judgment reveal that on October 22, 1991, the City passed Annexation Ordinance X-06-91, which proposed to annex a 23% contiguous geographical area known as Walden. This area was originally part of an annexation proposed in 1979 and repealed on July 11, 1989. When the City passed the current annexation ordinance, a remonstrance to the 1979 proposal was pending in Allen County Circuit Court.

The City's annexation proposal includes provisions for adding certain non-capital services as well as capital improvements to the Walden area. The proposal also includes cost estimates and methods for financing the planned services, which includes collecting additional tax revenues from area residents. On December 13, 1991, residents filed a remonstrance to this annexation in Allen Superior Court. After a bench trial, the court entered extensive findings of fact and conclusions of law overruling the remonstrance, and this appeal ensued.

When a party has requested specific findings of fact and conclusions thereon pursuant to Ind.Trial Rule 52(A), the reviewing court cannot affirm the judgment on any legal basis; rather, this court must determine whether the trial court's findings are sufficient to support the judgment. Vanderburgh County Board of Commissioners v. Rittenhouse (1991), Ind.App., 575 N.E.2d 663, 665, trans. denied. In reviewing the judgment, we must first determine whether the evidence supports the findings and second, whether the findings support the judgment. Id. The judgment will be reversed only when clearly erroneous, i.e., when the judgment is unsupported by the findings of fact and conclusions entered on the findings. DeHaan v. DeHaan (1991), Ind.App., 572 N.E.2d 1315, 1320, trans. denied. Findings of fact are clearly erroneous when the record lacks any evidence or reasonable inferences from the evidence to support them. Id. To determine whether the findings or judgment are clearly erroneous, we consider only the evidence favorable to the

judgment and all reasonable inferences flowing therefrom, and we will not reweigh the evidence or assess witness credibility. Id.

I.

Statutory Barriers to Annexation

Remonstrators challenge the trial court's findings as clearly erroneous on several bases. Relevant to the Remonstrators first allegation of error is annexation ordinance X-04-79, which was proposed in 1979 and included the Walden area. Annexation ordinance X-04-79 was repealed in 1989; however, a remonstrance to the 1979 ordinance was pending until February 2, 1993. The court's order dismissing the 1979 remonstrance included findings regarding defects in the annexation ordinance "cast[ing] serious doubts on the ability of the City to sustain said ordinance." Record, p.833-3. Despite these defects, because the subject ordinance had been repealed the remonstrance was dismissed. The court ordered the City to pay the remonstrators' attorney fees. Record, p.833-8.

Remonstrators argue that the court's February 2, 1993 decision divests the City of power to annex the subject territory for two years thereafter, rendering the current annexation ordinance contrary to law. Remonstrators rely on the following statute in support of their argument:

> In case the decision is adverse to annexation, no further annexation proceedings for the territory shall be lawful for two (2) years after the rendition of the judgment, unless the annexation is petitioned in conformance with provisions of section 405 [18-5-10-23] of this article.

IND. CODE 18-5-10-26 (Supp. 1979) [repealed by P.L. 212, effective September 1, 1981]. According to Remonstrators,

although the February 2, 1993 decision was a judgment dismissing the remonstrance, it was in fact a decision adverse to annexation because it questioned the legality of the ordinance and assessed attorney fees against the City.

Remonstrators' argument is one of statutory construction. In support of their argument, Remonstrators rely on the legislature's 1981 recodification of the relevant statute, which states in relevant part:

> If a judgment [on remonstrance] is adverse to annexation, the municipality may not make further attempts to annex the territory during the two [2] years following the judgment....

IND. CODE 36-4-3-15(b) (1993). Remonstrators contend that the legislature's change from the term decision to the term judgment in the recodified provision is evidence that these terms should be given different meanings, thereby indicating that the term decision should be read broadly to include any adverse finding by the court.

We reject this argument. A statute should be construed so as to ascertain and give effect to the intention of the legislature as expressed in the statute. State v. Windy City Fireworks, Inc. (1992), Ind.App., 600 N.E.2d 555, 558, adopted on transfer (1993), Ind., 608 N.E.2d 699. We presume words appearing in the statute were intended to have meaning, and we endeavor to give those words their plain and ordinary meaning absent a clearly manifested purpose to do otherwise. Indiana Dept. of Human Services v. Firth (1992), Ind.App., 590 N.E.2d 154, 157, trans. denied. The terms judgment and decision may be used interchangeably. See BLACK'S LAW DICTIONARY 494-495 (3rd

Ed. 1968). Their plain and ordinary meanings in the context of the respective statutes, as well as the legislature's intent in recodification,[1] support the conclusion that both terms should be construed to refer to the final disposition of a remonstrance. In the case at bar, the court's final order dismissed the 1979 remonstrance. Because such disposition is not adverse to annexation, the current annexation ordinance is not barred by the two year limitation contained in I.C. 18-5-10-26.

II.

Harassment

Remonstrators next argue that passing the current annexation ordinance during the pendency of the 1979 litigation constitutes harassment, bad faith or vexatious conduct by the City, thus precluding judgment in the City's favor. It is well settled that a municipality is free to repeal a pending annexation ordinance regardless of whether a remonstrance has been filed opposing it. Remonstrators Below v. City of Fort Wayne (1991), Ind.App., 571 N.E.2d 1312, 1314. A limited exception to this rule exists where the municipality repeals and then reenacts an ordinance for the sole purpose of harassing the remonstrators in order to wear down their opposition. Id. (citing King v. City of Bloomington

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[1]The legislative history contains the following statement by the General Assembly:

> This act is intended to be a codification and restatement of applicable or corresponding provisions of the laws repealed by this act. If this act repeals and replaces a law in the same form or in a restated form, the substantive operation and effect of that law continues uninterrupted.

1980 Ind. Acts 212, § 11(a), p. 1854.

(1959), 239 Ind. 548, 159 N.E.2d 563). In order to prevail on their harassment claim, Remonstrators must prove each of the following elements: 1) the City has created a hardship on them by alleged harassment and vexatious proceedings in order to wear down their opposition; 2) the successive ordinances for annexation are the same or substantially similar to the first; and 3) the primary statutory determinants for annexation no longer exist. Id.

Remonstrators present no affirmative evidence supporting these elements. Instead, Remonstrators rely on the fact that their first remonstrance was still pending when the City enacted the 1991 annexation ordinance. Additionally, Remonstrators point to the City's dilatory conduct during the pendency of the first remonstrance.

From this evidence we cannot conclude that the trial court's finding is clearly erroneous. A municipality may repeal an ordinance which it believes to be defective to avoid a trial on the merits and subsequently reenact an ordinance covering the same territory. Jones v. Town of Sunman (1962), 243 Ind. 70, 73, 181 N.E.2d 777, 778, reh. denied. This conduct alone is insufficient to warrant reversal of the trial court's finding. Id. Moreover, Remonstrators present no evidence to refute the trial court's finding that the 1991 ordinance is not substantially the same as the 1979 ordinance. Because these findings are supported by the record, our standard of review does not permit reversal.

III.

Amendments to Fiscal Plan

Remonstrators next allegation of error stems from changes made in the City's fiscal plan, originally prepared in May 1991, prior to its passage in October 1991. Remonstrators contend that because the City made changes to its fiscal plan after the proposal was presented to residents in June, 1991, Remonstrators were not sufficiently notified of the fiscal plan's contents. Such notice is required so that "landowners [may] make an intelligent decision about whether to accept annexation or remonstrate." City of Hobart v. Chidester (1992), Ind., 596 N.E.2d 1374, 1377-1378, reh. denied. According to Remonstrators, they were given insufficient notice of the changes made after June 1991, and therefore could not make an informed decision about whether to remonstrate.

This argument is without merit. The relevant statutory provision requires the evidence to establish "that the municipality has developed a written fiscal plan ... by resolution of the legislative body, as of the date of passage of the annexation ordinance." IND. CODE § 36-4-3-13(d) (1993). The resolution need not contain the text of the fiscal plan, as long as the plan's contents are incorporated by reference. City of Hobart, supra at 1377, n.4.

The record indicates that the City complied with this statutory provision when it passed the 1991 annexation ordinance by resolution in October 1991. The resolution clearly incorporated by reference the written fiscal plan, which the City placed on file and available for public inspection in the city

clerk's office. Record, pp. 401-402. Remonstrators had ample time and opportunity after the final resolution to inspect the ordinance and its incorporated fiscal plan, as they are allotted sixty days from the date of publication of the ordinance to file their remonstrance. IND. CODE § 36-4-3-11(a) (1993).[2] The mere fact that the City informed area residents regarding an earlier draft of the proposed fiscal plan does not render defective the City's subsequent actions. The trial court's conclusion that the City complied with the applicable statutory requirements for filing and publication is well supported by the record.

IV.

Sufficiency of Description

Remonstrators next challenge the trial court's conclusion that the ordinance's legal description was sufficient, thus allowing reformation of three errors therein.[3] It is well settled that misdescriptions in an annexation ordinance may be disregarded where the boundaries of the annexation territory are

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[2]Remonstrators in fact filed a valid remonstrance during the sixty day time period pursuant to I.C. 36-4-3-11(a).

[3]Remonstrators contend that reformation was an improper exercise of the trial court's equitable powers. However, our supreme court has determined that a court may reform an erroneous description that otherwise provides sufficient notice of the annexation territory:

> [I]t is always proper and desirable that the court, in entering a decree which effects the transfer of real estate, describe the territory involved with the greatest possible clarity and certainty, even though a more complete description requires language different than that used in the complaint or enactment by which the proceeding was instituted.

Woerner v. City of Indianapolis (1961), 242 Ind. 253, 266, 177 N.E.2d 34, 39, reh. denied, cert. denied, 368 U.S. 989. We thus conclude that reformation was proper in this case.

evident from a fair and reasonable construction of the ordinance without result to parol evidence. Enswiler v. City of Gary, Lake County (1976), 169 Ind.App. 642, 646, 350 N.E.2d 658, 660, trans. denied.

The trial court found that although the legal description contained an error, the area was adequately described by a map incorporated in the fiscal plan. Remonstrators argue that these findings are contrary to law because the errors in the legal description insufficiently identified the annexation territory, thus preventing the City from meeting the statutory elements required for a valid annexation.[4] We disagree.

Expert testimony established that the description was erroneous because the word southeast incorrectly appeared in three places therein. The expert testified that he could identify the errors in the description without resulting to parol evidence, and that by substituting the term southwest for southeast, he could identify the annexation territory. Record,

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[4]The elements required for a valid annexation are as follows:
(a)...[T]he court shall order a proposed annexation to take place if the following requirements are met:
(1) The requirements of either subsection (b) or (c).
(2) The requirements of subsection (d).
(b) The requirements of this subsection are met if the evidence establishes the following:
(1) That the territory sought to be annexed is contiguous to the municipality.
(2) One of the following:
(A) The resident population density of the territory sought to be annexed is at least three (3) persons per acre.
(B) Sixty percent (60%) of the territory is subdivided.
(C) The territory is zoned for commercial, business, or industrial uses.
I.C. 36-4-3-13.

p. 617-622. In addition, the maps which were incorporated into the ordinance made the boundaries evident. See Enswiler, supra. From this evidence the trial court could reasonably conclude that the annexation territory was sufficiently described, and that no one was seriously misled by the errors.

V.

Statutory Requirements

Remonstrators also contend that the City failed to satisfy the statutory requirements of IND. CODE § 36-4-3-13(d)(4) and (5) because no evidence of topography, land use and population density comparisons was presented to the trial court. As a result, the trial court's conclusions that the City's fiscal plan satisfied I.C. 36-4-3-13(d) and is "a sufficient benchmark by which to measure the services actually to be provided the territory as against those services promised," Record, p. 383, are contrary to law.

The Indiana Supreme Court addressed this issue in City of Hobart v. Chidester, supra. In City of Hobart, our supreme court concluded that in order to satisfy I.C. 36-4-3-13(d)(4) and (5), the City should set forth its topography, land use and population density comparisons to a similar area, by either including that information in the fiscal plan itself or by presenting evidence thereof at trial. Id. at 1378. This is because such comparisons "provid[e] a guidepost for cities in determining what services should be provided to the annexed territory." Id.

In the case at bar, the fiscal plan incorporated in the annexation ordinance makes substantial comparisons to an area

which it determined to be comparable. City planner Nancy Townsend testified at trial regarding these comparisons. The trial court concluded that the City Planning Department satisfied the requirements of I.C. 36-4-3-13(d)(4) and (5) by making the appropriate comparisons prior to making the determination of services to be provided the Walden area.[5] Record, p. 384. Remonstrators' allegation of error merely points to alleged contradictions in the fiscal plan and the evidence presented at trial. This is an invitation to reweigh the evidence, which we will not do. DeHaan, supra. Because the record supports the conclusion that the statutory requirements for annexation were met, we find no error.

VI.

Purpose of Annexation

Under a former version of Indiana's annexation statute, our supreme court concluded that a city may not annex property for the sole purpose of increasing tax revenues. City of Aurora v. Bryant (1960), 239 Ind. 548, 165 N.E.2d 141, reh. denied. Our supreme court recently determined that such purpose was also impermissible under the current version of I.C. 36-4-3-13(c). Chidester v. City of Hobart (1994), Ind., 631 N.E.2d 908, 913, n.6.

[5]Remonstrators contend that the trial court's Conclusion No. 7 reached the opposite result. Appellant's Brief at 43. However, a careful review of the record reveals that Remonstrators contention is wholly meritless; it is based on a misquote of Conclusion No. 7. See Record, p. 384.

Remonstrators contend that this rationale also applies to annexations under I.C. 36-4-3-13(b), thus rendering the City's annexation effort contrary to law. However, we believe it is unnecessary to make this determination. The trial court specifically found that the City's purpose in annexing Walden is not solely to raise taxes. Record, pp. 382-384. Remonstrators challenge this finding based only upon inferences gleaned from a comparison of the City's costs of annexation to the revenue gained from annexation. Although the record indicates that the City will gain substantial revenue from the annexation, the City presented evidence of additional reasons for its action.[6] This court will not reweigh or judge the credibility of that evidence on appeal. Because the evidence before the trial court supports its findings and conclusions thereon, we will not disturb its judgment on appeal.

Affirmed.

GARRARD, J., and SHARPNACK, C.J., CONCUR.

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[6]The City's fiscal plan indicates that the decision to annex the Walden area is part of a larger comprehensive annexation program implemented by the City. The program is based on a comprehensive study done by the City's Department of Community Development and Planning, which recommended annexation of land contiguous to the city limits in order to allow control and management of urban growth. Record, p. 404. Moreover, the record indicates that the City already provides certain services to the area, and that the area will benefit by the provision of additional services outlined in the fiscal plan. This evidence is sufficient to support the trial court's finding. See Sarringhaus v. City of Shelbyville (1971), 149 Ind.App. 255, 256-257, 271 N.E.2d 471, 472, trans. denied.

CERTIFICATION

STATE OF INDIANA } SS:
COURT OF APPEALS

I, H. John Okeson, Clerk of the Court of Appeals of the State of Indiana, certify the above and foregoing to be a true and complete

copy of the opinion of said Court in the above entitled cause.

IN WITNESS WHEREOF, I hereto set my hand and affix the seal of

the Clerk of the said Court, at the City of Indianapolis, this

7th day of June, 19 95.

H. John Okeson
CLERK

State Form 25048 (R / 5-91)
40

Admn. Appr._____

DIGEST SHEET

TITLE OF ORDINANCE WALDEN ANNEXATION ORDINANCE

DEPARTMENT REQUESTING ORDINANCE COMMUNITY & ECONOMIC DEVELOPMENT

SYNOPSIS OF ORDINANCE COMMITS CITY TO FOLLOW STATE LAW IN PROVIDING SERVICES TO ANNEXED AREA

X-94-06-21 (as amended)

EFFECT OF PASSAGE ANNEXATION APPROVED

EFFECT OF NON-PASSAGE ANNEXATION WILL BE SUBJECT TO LEGAL ATTACK

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS) FISCAL PLAN TO BE AVAILABLE PRIOR TO PASSAGE

ASSIGNED TO COMMITTEE (PRESIDENT)_____

BILL NO. X-91-06-21 (AS AMENDED)

REPORT OF THE COMMITTEE ON ANNEXATION

DAVID C. LONG, CHAIRMAN
JANET G. BRADBURY, VICE CHAIRPERSON
HENRY, EDMONDS, REDD

WE, YOUR COMMITTEE ON ANNEXATION TO WHOM WAS REFERRED AN (ORDINANCE) (~~RESOLUTION~~) annexing certain territory commonly known as the Walden Annexation Area to Fort Wayne and including the same in Councilmanic District #2

HAVE HAD SAID (ORDINANCE) (~~RESOLUTION~~) UNDER CONSIDERATION AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID (ORDINANCE) (~~RESOLUTION~~)

DO PASS	DO NOT PASS	ABSTAIN	NO REC
Mark Long			
Mary Edmonds			
John Henry			
J G Bradbury			

DATED: 10-22-91.

Sandra E. Kennedy
City Clerk

THE CITY OF FORT WAYNE

CITY-COUNTY BUILDING • ROOM 122 • FORT WAYNE, INDIANA 46802 • 219-427-1208

SANDRA E. KENNEDY, CITY CLERK

October 24, 1991

Ms. Connie Lambert
Fort Wayne Newspapers, Inc.
600 West Main Street
Fort Wayne, IN 46802

Dear Ms. Lambert:

Please give the attached full coverage on the dates of October 28, 1991 and November 4, 1991, in both the News Sentinel and Journal Gazette.

RE: Legal Notice for Common Council of Fort Wayne, IN

Bill No. X-91-06-21 (as amended)
Annexation Ordinance No. X-06-91
Walden Annexation

Please send us 4 copies of the Publisher's Affidavit from both the newspapers.

Sincerely yours,

Sandra E. Kennedy
City Clerk

SEK/ne
ENCL: 1

LEGAL NOTICE

Notice is hereby given that on the 22nd day of October, 19 91, the Common Council of the City of Fort Wayne, Indiana, in a Regular Session did pass the following Bill No. X-91-06-21 (as amended) Annexation Ordinance No. X-06-91 to-wit:

Bill No. X-91-06-21 (as amended)

ANNEXATION ORDINANCE NO. X- 06-91

AN ORDINANCE annexing certain territory commonly known as the Walden Annexation Area to Fort Wayne and including the same in Councilmanic District No. 2.

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the following described territory be and the same is hereby annexed to, and made a part of, the corporation of the City of Fort Wayne, Indiana, to-wit:

Part of the Southeast Quarter of Section 28, Township 31 North, Range 13 East, and part of the Northeast Quarter of Section 33, Township 31 North, Range 13 East, Allen County, Indiana more particularly described as follows:

Beginning at the intersection of the south right of way line of Trier Road and the east line of the Southeast Quarter of Section 28, Township 31 North, Range 13 East; thence East along the south right of way line of said Trier Road to the west right of way line of Maplecrest Road; thence South along the west right of way line of Maplecrest Road to a point 450 feet south of the north line of the Northeast Quarter of Section 33, Township 31 North, Range 13 East, said point being on the North line of "The Hollows" Subdivision, Section 1 as recorded in Plat Book 41, Pages 31-35 in the Office of the Recorder of Allen County, Indiana; thence west along the north line of said Hollows subdivision (said north line also being the southerly line and its easterly extension of Walden Addition, Section 5 as recorded in Plat Book 38, Pages 44-47) to a point on the easterly line of an Indiana and Michigan Power Company right of way (said point also being the northwest corner of Lot 25 in said Hollows subdivision); thence north along said Indiana and Michigan easterly right of way line to the South line of the Southeast Quarter of said Section 28; thence West along the south line of said Southeast Quarter of Section 28 (said south line also being the south line of Walden Addition, Section 2 as recorded in Plat Book 36, Pages 20-24, in the Office of the Recorder) to the east line of the Southeast Quarter of said Section 28; thence North along said East line of said Southeast Quarter to the Point of Beginning containing 174 Acres more or less.

SECTION 2. That the City of Fort Wayne will furnish the above described territory within a period of one (1) year from the effective date of annexation, planned services of a non-capital nature, including

maintenance, in a manner which is equivalent in standard and scope to those non-capital services provided to areas within the City of Fort Wayne which have similar topography, patterns of land utilization and population density to the said described territory. The City of Fort Wayne will also provide services of a capital improvement nature, including street construction, street lighting, sewer facilities, water facilities and stormwater drainage facilities to the annexed territory within three (3) years of the effective date of annexation, in the same manner as such services are provided to areas already in the City of Fort Wayne with similar topography, patterns of land utilization and population density, and in a manner consistent with federal, state and local laws, procedures and planning criteria.

SECTION 3. That governmental and proprietary services will be provided to the above described territory in a manner consistent with the written Fiscal Plan for the territory developed by the Division of Community and Economic Development. Said Plan was examined by the Common Council of the City of Fort Wayne and is approved and adopted by the Common Council by and upon the passage of this Ordinance. Two copies of said plan are on file in the office of the Clerk of the City of Fort Wayne and are available for inspection as required by law.

SECTION 4. That said described territory shall be temporarily assigned to Councilmanic Political Ward No. 2 of the City of Fort Wayne, Indiana, as described in Division I, Section 2-9 of Chapter 2 of the Municipal Code of the City of Fort Wayne, Indiana of 1974, as amended. This assignment is subject to redistricting pursuant to I.C. 36-4-6-3 (g).

SECTION 5. That, after adoption and any and all

necessary approval by the Mayor, this Ordinance shall be published as provided for in I.C. 36-4-3-7. The above described territory shall become part of the City of Fort Wayne on February 28, 1992. In the event of litigation challenging the ordinance, the territory shall become part of the City on the first 28th day of February following any final judicial decisions resolving any legal challenge to the ordinance in favor of the City.

David C. Long
COUNCILMEMBER

Read the third time in full and motion by Long, seconded by Edmonds, and duly adopted, placed on its passage. PASSED by the following vote:

AYES: Nine
Bradbury, Burns, Edmonds, GiaQuinta, Henry, Long, Redd, Schmidt, Talarico
NAYS: None
ABSENT: None
ABSTAINED: None

DATED: 10-22-91

Sandra E. Kennedy
City Clerk

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana as Annexation Ordinance No. X-06-91 on the 22nd day of October, 1991

ATTEST: SEAL

Sandra E. Kennedy
City Clerk

Samuel J. Talarico
Presiding Officer

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 23rd day of October, 1991, at the hour of 2:30 o'clock P.M., E.S.T.

Sandra E. Kennedy
City Clerk

Approved and signed by me this 23rd day of October, 1991, at the hour of 3:30 o'clock P.M.,E.S.T.

Paul Helmke
Mayor

I, The Clerk of the City of Fort Wayne, Indiana do hereby certify that the above and foregoing is a full, true and complete copy of Annexation Ordinance No. X-06-91, passed by the Common Council on the 22nd day of October, 19 91, and that said Ordinance was duly signed and approved by the Mayor on the 23rd day of October, 19 91, and now remains on file and on record in my office.

WITNESS my hand and the official seal of the City of Fort

COMMUNITY & ECONOMIC DEVELOPMENT

MEMORANDUM

TO: City Council Members

FROM: Michael A. Sapp, Director of Planning M.A.S.

SUBJECT: Walden Annexation

DATE: October 14, 1991

****

Attached is the Fiscal Plan for the above noted annexation. The Walden Annexation contains approximately 174 acres of which 116 acres are developed residentially. The remaining acreage includes a mix of professional, commercial, institutional, recreational, and right-of-way uses. Approximately 1,449 persons reside in the annexation area.

Since June of 1991, when the Walden annexation ordinance and resolution were introduced to City Council, members of C&ED's planning staff met with property owners within the proposed annexation area. City Attorney, Tim McCaulay has been corresponding with the annexation area's attorney John Clifton. City Officials offered to meet with the residents of the Walden area again to further discuss the annexation. Attached is the response from the attorney representing Walden. The proposed effective date of annexation for the Walden area is February 28, 1992.

WILLIAM F. McNAGNY
J. MICHAEL O'HARA
OTTO M. BONAHOOM
HOWARD L. CHAPMAN
TED S. MILLER
PAUL S. STEIGMEYER
JOHN M. CLIFTON, JR.
DOUGLAS E. MILLER
ROBERT S. WALTERS
JOHN F. LYONS
H. THOMAS HORTON II
RICHARD D. ROBINSON
WILLIAM L. SWEET, JR.
PATRICK G. MICHAELS
THOMAS M. FINK
RICHARD E. FOX
GARY J. RICKNER
JOHN D. WALDA
NANCY E. WILKINS
JAMES F. FENTON
JOHN P. MARTIN
ALAN VERPLANCK

DENNIS C. BECKER
THOMAS P. YODER
THOMAS M. KIMBROUGH
RONALD J. EHINGER
STEPHEN L. CHAPMAN
THOMAS A. HERR
ROBERT R. GLENN
THOMAS A. COZ
THOMAS J. MARKLE
MICHAEL P. O'HARA
JOSEPH G. BONAHOOM
THOMAS M. NIEZER
ANTHONY M. STITES
RENEE R. NEELD
DAVID R. STEINER
KEVIN K. FITZHARRIS

OF COUNSEL
MENTOR KRAUS
J.A. BRUGGEMAN
JAMES M. BARRETT III

Barrett & McNagny

ATTORNEYS

215 EAST BERRY STREET • POST OFFICE BOX 2263
FORT WAYNE, INDIANA 46801-2263 • (219) 423-9551
FAX (219) 423-8924

49 N. PENNSYLVANIA STREET
SUITE 601
INDIANAPOLIS, INDIANA 46204
(317) 635-8594
FAX (317) 636-8447

429 JEFFERSON PARK MALL
P.O. BOX 5156
HUNTINGTON, INDIANA 46750
(219) 356-7766
FAX (219) 356-7782

August 20, 1991

RECEIVED AUG 21 1991

Mr. Greg Purcell
Director, Community &
Economic Development
City of Fort Wayne
One Main Street
Fort Wayne, IN 46802

Re: Possible Annexation of Walden

Dear Mr. Purcell:

As you are probably aware, we are representing the residents of Walden with respect to the above captioned matter.

I discussed another potential meeting by City officials with a representative of the Walden Board. To be candid, the Board does not feel another meeting with City representatives would be fruitful as the association is firmly opposed to any annexation attempt by the City of Fort Wayne. Therefore, while the Board and residents appreciate the courtesy of your letter of July 25, 1991, the suggested meeting is respectfully declined.

Sincerely yours,

BARRETT & McNAGNY

John M. Clifton, Jr.

JMC/sms
cc: Norm Drew
cc: John B. Sage

SUMMONS

UPON SERVICE BY MAIL

STATE OF INDIANA }
COUNTY OF ALLEN } **SS:**

ALLEN SUPERIOR COURT
FORT WAYNE, INDIANA

Cause No. 02D01-9112-CP-2699

Fee Book _____ **Page** _____

IN THE MATTER OF THE ANNEXATION PROPOSED BY ANNEXATION ORDINANCE NUMBER X-06-91 BEING AN ORDINANCE TO ANNEX CERTAIN TERRITORY TO THE CITY OF FORT WAYNE AND TO INCLUDE SAME IN COUNCILMANIC DISTRICT NUMBER 2 VS.

TO: Clerk
City of Fort Wayne
1st Floor City County Bldg.
Fort Wayne, IN 46802

You have been sued by the above-named "plaintiff," in the Allen Superior Court. The attached **COMPLAINT** explains the plaintiff's claim and it also states the demand which the plaintiff has made against you. If you have an attorney you should take these papers to your attorney immediately.

Either you or your attorney must reply to the **COMPLAINT** within twenty-three (23) days by filing a written **ANSWER**. Your **ANSWER** must be filed at the Court Clerk's office, Allen County Courthouse. Failure to file a written **ANSWER** within twenty-three (23) days will result in the court granting the plaintiff whatever was asked for in the **COMPLAINT.**

If you have a claim against the plaintiff arising out of the transaction or occurrence set out in the **COMPLAINT**, you must state it in your **ANSWER.**

Date December 12, 1991

Clerk, Allen Superior Court (Seal)

BARRETT & McNAGNY
John M. Clifton, Jr.
Attorney for Plaintiff
215 East Berry Street
P. O. Box 2263
Fort Wayne, IN 46801

Telephone: (219) 423-9551

Original sent to Law Dept. 12-19-91.

CERTIFICATE OF MAILING

I hereby certify that on the _____ day of _____, 19____,

I mailed a copy of this summons and a copy of the complaint to each of the defendant(s) _____

by (registered or certified) mail requesting a return receipt addressed to each of said defendant(s)_____

at the address(es) furnished by the plaintiff.

Date _____

Clerk, Allen Superior Court (Seal) SUM—2

95-27842

Bill No. X- 91-06-21 (As Amended)

COPY

ANNEXATION ORDINANCE NO. X- 06-91

AN ORDINANCE annexing certain territory commonly known as the Walden Annexation Area to Fort Wayne and including the same in Councilmanic District No. 2.

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the following described territory be and the same is hereby annexed to, and made a part of, the corporation of the City of Fort Wayne, Indiana, to-wit:

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Beginning at the intersection of the south right of way line of Trier Road and the east line of the Southeast Quarter of Section 28, Township 31 North, Range 13 East; thence East along the south right of way line of said Trier Road to the west right of way line of Maplecrest Road; thence South along the west right of way line of Maplecrest Road to a point 450 feet south of the north line of the Northeast Quarter of Section 33, Township 31 North, Range 13 East, said point being on the North line of "The Hollows" Subdivision, Section 1 as recorded in Plat Book 41, Pages 31-35 in the Office of the Recorder of Allen County, Indiana; thence west along the north line of said Hollows subdivision (said north line also being the southerly line and its easterly extension of Walden Addition, Section 5 as recorded in Plat Book 38, Pages 44-47) to a point on the easterly line of an Indiana and Michigan Power Company right of way (said point also being the northwest corner of Lot 25 in said Hollows subdivision); thence north along said Indiana and Michigan easterly right of way line to the South line of the Southeast Quarter of said Section 28; thence West along the south line of said Southeast Quarter of Section 28 (said south line also being the south line of Walden Addition, Section 2 as recorded in Plat Book 36, Pages 20-24, in the Office of the Recorder) to the east line of the Southeast Quarter of said Section 28; thence North along said East line of said Southeast Quarter to the Point of Beginning containing 174 Acres more or less.

SECTION 2. That the City of Fort Wayne will furnish the above described territory within a period of one (1) year from the effective date of annexation, planned services of a non-capital nature, including police protection, fire protection, and street and road

maintenance, in a manner which is equivalent in standard and scope to those non-capital services provided to areas within the City of Fort Wayne which have similar topography, patterns of land utilization and population density to the said described territory. The City of Fort Wayne will also provide services of a capital improvement nature, including street construction, street lighting, sewer facilities, water facilities and stormwater drainage facilities to the annexed territory within three (3) years of the effective date of annexation, in the same manner as such services are provided to areas already in the City of Fort Wayne with similar topography, patterns of land utilization and population density, and in a manner consistent with federal, state and local laws, procedures and planning criteria.

SECTION 3. That governmental and proprietary services will be provided to the above described territory in a manner consistent with the written Fiscal Plan for the territory developed by the Division of Community and Economic Development. Said Plan was examined by the Common Council of the City of Fort Wayne and is approved and adopted by the Common Council by and upon the passage of this Ordinance. Two copies of said plan are on file in the office of the Clerk of the City of Fort Wayne and are available for inspection as required by law.

SECTION 4. That said described territory shall be temporarily assigned to Councilmanic Political Ward No. 2 of the City of Fort Wayne, Indiana, as described in Division I, Section 2-9 of Chapter 2 of the Municipal Code of the City of Fort Wayne, Indiana of 1974, as amended. This assignment is subject to redistricting pursuant to I.C. 36-4-6-3 (g).

SECTION 5. That, after adoption and any and all

necessary approval by the Mayor, this Ordinance shall be published as provided for in I.C. 36-4-3-7. The above described territory shall become part of the City of Fort Wayne on February 28, 1992. In the event of litigation challenging the ordinance, the territory shall become part of the City on the first 28th day of February following any final judicial decisions resolving any legal challenge to the ordinance in favor of the City.

David C. Long
COUNCILMEMBER

APPROVED AS TO FORM AND LEGALITY

J. Timothy McCaulay
J. TIMOTHY MCCAULAY, CITY ATTORNEY

Attest:
The above and foregoing is a true and perfect copy of Bill No. X-91-06-21 (as amended) Annexation Ordinance No. X-06-91 as the same appears and remains on record in my office.
Witness my hand and seal this 29th day of June 1991

Barbara E. Kennedy
CLERK

Read the first time in full and on motion by Bradbury seconded by Redd, and duly adopted, read the second time title and referred to the Committee on Annexation (and th City Plan Commission for recommendation) and Public Hearing to be held aft due legal notice, at ~~the Council Conference Room 128, City~~-County Building Fort Wayne, Indiana, on _____, the _____, d of _____, 19____, at _____ o'clock ____.M.,E.S

DATED: 6-11-91.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Long seconded by Edmonds, and duly adopted, placed on its passage. ~~PASSED~~ LOST by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
TOTAL VOTES	9			
BRADBURY	✓			
BURNS	✓			
EDMONDS	✓			
GiaQUINTA	✓			
HENRY	✓			
LONG	✓			
REDD	✓			
SCHMIDT	✓			
TALARICO	✓			

DATED: 10-22-91

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ANNEXATION) ~~(APPROPRIATION)~~ (GENERAL) ~~(SPECIAL)~~ ~~(ZONING MAP)~~ ORDINANCE RESOLUTION NO. X-06-91

on the 22nd day of October, 19 91,

ATTEST: Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

SEAL
Samuel J. Talarico
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, o the 23rd day of October, 19 at the hour of 2:30 o'clock P.M.,E.S.T.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 23d day of October 19 91, at the hour of 3:30 o'clock P.M.,E.S.T.

PAUL HELMKE, MAYOR

Bill No. X- 91-06-21 (As Amended)

ANNEXATION ORDINANCE NO. X- 06-91

AN ORDINANCE annexing certain territory commonly known as the Walden Annexation Area to Fort Wayne and including the same in Councilmanic District No. 2.

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

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SECTION 2. That the City of Fort Wayne will furnish the above described territory within a period of one (1) year from the effective date of annexation, planned services of a non-capital nature, including police protection, fire protection, and street and road

maintenance, in a manner which is equivalent in standard and scope to those non-capital services provided to areas within the City of Fort Wayne which have similar topography, patterns of land utilization and population density to the said described territory. The City of Fort Wayne will also provide services of a capital improvement nature, including street construction, street lighting, sewer facilities, water facilities and stormwater drainage facilities to the annexed territory within three (3) years of the effective date of annexation, in the same manner as such services are provided to areas already in the City of Fort Wayne with similar topography, patterns of land utilization and population density, and in a manner consistent with federal, state and local laws, procedures and planning criteria.

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SECTION 4. That said described territory shall be temporarily assigned to Councilmanic Political Ward No. 2 of the City of Fort Wayne, Indiana, as described in Division I, Section 2-9 of Chapter 2 of the Municipal Code of the City of Fort Wayne, Indiana of 1974, as amended. This assignment is subject to redistricting pursuant to I.C. 36-4-6-3 (g).

SECTION 5. That, after adoption and any and all

necessary approval by the Mayor, this Ordinance shall be published as provided for in I.C. 36-4-3-7. The above described territory shall become part of the City of Fort Wayne on February 28, 1992. In the event of litigation challenging the ordinance, the territory shall become part of the City on the first 28th day of February following any final judicial decisions resolving any legal challenge to the ordinance in favor of the City.

David C. Long
COUNCILMEMBER

APPROVED AS TO FORM AND LEGALITY

J. Timothy McCaulay
J. TIMOTHY MCCAULAY, CITY ATTORNEY

Attest:
The above and foregoing is a true and perfect copy of Bill No. X-91-06-21 (as amended) Annexation Ordinance No. X-06-91 as the same appears and remains on record in my office.
Witness my hand and seal this 29th day of June 1995
Barbara E. Kennedy
CLERK

AUDITOR'S OFFICE
FILED
JUN 29 1995
AUDITOR OF ALLEN COUNTY

Read the first time in full and on motion by Bradbury seconded by Redd, and duly adopted, read the second time title and referred to the Committee on Annexation (and th City Plan Commission for recommendation) and Public Hearing to be held aft due legal notice, at ~~the Council Conference Room 128, City~~-County Building Fort Wayne, Indiana, on _____, the _____, d of _____, 19____, at _____ o'clock M.,E.S

DATED: 6-11-91.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Long seconded by Edmonds, and duly adopted, placed on its passage. ~~PASSED~~ LOST by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
TOTAL VOTES	9			
BRADBURY	✓			
BURNS	✓			
EDMONDS	✓			
GiaQUINTA	✓			
HENRY	✓			
LONG	✓			
REDD	✓			
SCHMIDT	✓			
TALARICO	✓			

DATED: 10-22-91

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ANNEXATION) ~~(APPROPRIATION)~~ ~~(GENERAL)~~ ~~(SPECIAL)~~ ~~(ZONING MAP)~~ ORDINANCE ~~RESOLUTION~~ NO. X-06-91 on the 22nd day of October, 19 91.

ATTEST: Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

SEAL
Samuel J. Talarico
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 23rd day of October, 19 91, at the hour of 2:30 o'clock P.M.,E.S.T.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 23d day of October, 19 91, at the hour of 3:30 o'clock P.M.,E.S.T.

PAUL HELMKE, MAYOR

Form Prescribed by State Board of Accounts — General Form No. 99P (Revised 1987)

FW Common Council
(Governmental Unit)
Allen
County, Indiana

To: The News-Sentinel Dr.
P.O. Box 100
Fort Wayne, IN

PUBLISHER'S CLAIM

LINE COUNT

Display Matter (Must not exceed two actual lines, neither of which shall total more than four solid lines of type in which the body of the advertisement is set) -- number of equivalent lines	
Head -- number of lines	
Body -- number of lines	
Tail -- number of lines	
Total number of lines in notice	

COMPUTATION OF CHARGES

145 lines, 1 columns wide equals 145 equivalent lines at .495 cents per line	$ 71.78
Additional charge for notices containing rule or tabular work (50 percent of above amount)	
Charge for extra proofs of publication ($1.00 for each proof in excess of two)	2.00
TOTAL AMOUNT OF CLAIM	$ 73.78

DATA FOR COMPUTING COST

Width of single column 12.5 ems
Number of insertions 2
Size of type 6 point

Pursuant to the provisions and penalties of Chapter 155, Acts 1953,

I hereby certify that the foregoing account is just and correct, that the amount claimed is legally due, after allowing all just credits, and that no part of the same has been paid.

Cindy Gillenwater

Date: Nov 4, 19 91 Title: Clerk

LEGAL NOTICE

Notice is hereby given that on the 22nd day of October, 1991, the Common Council of the City of Fort Wayne, Indiana, in a Regular Session did pass the following Bill No. X-91-06-21 (as amended) Annexation Ordinance No. X-06-91 to-wit:

Bill No. X-91-06-21 (as amended)

ANNEXATION ORDINANCE NO. X-06-91

AN ORDINANCE annexing certain territory commonly known as the Walden Annexation Area to Fort Wayne and including the same in Councilmanic District No. 2.

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the following described territory is and the same is hereby annexed to, and made a part of, the corporation of the City of Fort Wayne, Indiana to-wit:

Part of the Southeast Quarter of Section 28, Township 31 North, Range 13 East, and part of the Northeast Quarter of Section 33, Township 31 North, Range 13 East, Allen County, Indiana more particularly described as follows:

Beginning at the intersection of the south right of way line of Trier Road and the east line of the Southeast Quarter of Section 28, Township 31 North, Range 13 East; thence East along the south right of way line of said Trier Road to the West right of way line of Maplecrest Road; thence South along the west right of way line of Maplecrest Road to a point 450 feet south of the north line of the Northeast Quarter of Section 33, Township 31 North, Range 13 East, said point being on the North line of "The Hollows" Subdivision, Section 1 as recorded in Plat Book 41, Pages 31-35 in the Office of the Recorder of Allen County, Indiana; thence west along the north line of said Hollows subdivision (said north line also being the southerly line and its easterly extension of Walden Addition, Section 5 as recorded in Plat Book 38, Pages 44-47) to a point on the easterly line of an Indiana and Michigan Power Company right of way (said point also being the northwest corner of Lot 25 in said (Hollows subdivision); thence north along said Indiana and Michigan easterly right of way line to the South line of the Southeast Quarter of said Section 28; thence West along the south line of said Southeast Quarter of Section 28 (said south line also being the south line of Walden Addition, Section 2 as recorded in Plat Book 36, Pages 20-24, in the Office of the Recorder) to the east line of the Southeast Quarter of said Section 28; thence North along said East line of said Southeast Quarter to the Point of Beginning containing 174 Acres more or less.

SECTION 2. That the City of Fort Wayne will furnish the above described territory within a period of one (1) year from the effective date of annexation, planned services of a non-capital nature, including police protection, fire protection, and street and road maintenance, in a manner which is equivalent in

PUBLISHER'S AFFIDAVIT

State of Indiana)
) ss:
Allen County)

Personally appeared before me, a notary public in and for said county and state, the undersigned CIndy Gillenwater who, being duly sworn, says that he/she is Clerk of the The News-Sentinel newspaper of general circulation printed and published in the English language in the (city) (town) of Fort Wayne, IN in state and county aforesaid, and that the printed matter attached hereto is a true copy, which was duly published in said paper for 2 time(s), the dates of publication being as follows:

10/28/91 11/4/91

Cindy Gillenwater

Subscribed and sworn to before me this 4th day of Nov, 19 91.

Shelley R LaRue
Notary Public Whitley County,
SHELLEY R. LARUE

My commission expires: March 3, 1994

My commission expires: March 3, 1994

SHELLEY R. LARUE

SECTION 2. That the City of Fort Wayne will furnish the above described territory within a period of one (1) year from the effective date of annexation, planned services of a non-capital nature, including police protection, fire protection, and street and road maintenance, in a manner which is equivalent in standard and scope to those non-capital services provided to areas within the City of Fort Wayne which have similar topography, patterns of land utilization and population density to the said described territory. The City of Fort Wayne will also provide services of a capital improvement nature, including street construction, street lighting, sewer facilities, water facilities and stormwater drainage facilities to the annexed territory within three (3) years of the effective date of annexation, in the same manner as such services are provided to areas already in the City of Fort Wayne with similar topography, patterns of land utilization and population density, and in a manner consistent with federal, state and local laws, procedures and planning criteria.

SECTION 3. That governmental and proprietary services will be provided to the above described territory in a manner consistent with the written Fiscal Plan for the territory developed by the Division of Community and Economic Development. Said Plan was examined by the Common Council of the City of Fort Wayne and is approved and adopted by the Common Council by and upon the passage of this Ordinance. Two copies of said plan are on file in the office of the Clerk of the City of Fort Wayne and are available for inspection as required by law.

SECTION 4. That said described territory shall be temporarily assigned to councilmanic Political Ward No. 2 of the City of Fort Wayne, Indiana, as described in Division I, Section 2-9 of Chapter 2 of the Municipal Code of the City of Fort Wayne, Indiana of 1974, as amended. This assignment is subject to redistricting pursuant to I.C. 36-4-6-3 (g).

SECTION 5. That, after adoption and any and all necessary approval by the Mayor, this Ordinance shall be published as provided for in I.C. 36-4-3-7. The above described territory shall become part of the City of Fort Wayne on February 28, 1992. In the event of litigation challenging the ordinance, the territory shall become part of the City on the first 28th day of February following any final judicial decisions resolving any legal challenge to the ordinance in favor of the City.

David C. Long
COUNCILMEMBER

Read the third time in full and motion by Long, seconded by Edmonds, and duly adopted, placed on its passage. PASSED by the following vote:

AYES: Nine
Bradbury, Burns, Edmonds, GiaQuinta, Henry, Long, Redd, Schmidt, Talarico
NAYS: None
ABSENT: None
ABSTAINED: None
DATED: 10-22-91

Sandra E. Kennedy
City Clerk

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana as Annexation Ordinance No. X-06-91 on the 22nd day of October, 1991

ATTEST:
Sandra E. Kennedy
City Clerk

Samuel J. Talarico
Presiding Officer

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 23rd day of October, 1991, at the hour of 2:30 P.M., E.S.T.
Sandra E. Kennedy
City Clerk

Approved and signed by me this 23rd day of October, 1991, at the hour of 3:30 P.M., E.S.T.

Paul Helmke
Mayor

I, The Clerk of the City of Fort Wayne, Indiana do hereby certify that the above and foregoing is a full, true and complete copy of Annexation Ordinance No. X-06-91, passed by the Common Council on the 22nd day of October, 1991, and that said Ordinance was duly signed and approved by the Mayor on the 23rd day of October, 1991, and now remains on file and on record in my office.

WITNESS my hand, and the official seal of the City of Fort Wayne, Indiana, this 23rd day of October, 1991.

SANDRA E. KENNEDY, CITY CLERK

10–28/11–4

Form Prescribed by State Board of Accounts

General Form No. 99P (Revised 1987)

FW Common Council
(Governmental Unit)

_____ County, Indiana

To: The Journal-Gazette Dr.
P.O. Box 100
Fort Wayne, IN

PUBLISHER'S CLAIM

LINE COUNT

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145 lines, 1 columns wide equals 145 equivalent lines at .495 cents per line $ 71.78

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Charge for extra proofs of publication ($1.00 for each proof in excess of two) 2.00

TOTAL AMOUNT OF CLAIM $ 73.78

DATA FOR COMPUTING COST

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Pursuant to the provisions and penalties of Chapter 155, Acts 1953,

I hereby certify that the foregoing account is just and correct, that the amount claimed is legally due, after allowing all just credits, and that no part of the same has been paid.

Cindy Gillenwater

Date: Nov 4, 19 91 Title: Clerk

Legal Notice

LEGAL NOTICE
Notice is hereby given that on the 22nd day of October, 1991, the Common Council of the City of Fort Wayne, Indiana, in a Regular Session did pass the following Bill No. X-91-06-21 (as amended) Annexation Ordinance No. X-06-91 to-wit:
Bill No. X-91-06-21 (as amended)
ANNEXATION ORDINANCE NO. X-06-91
AN ORDINANCE annexing certain territory commonly known as the Walden Annexation Area to Fort Wayne and including the same in Councilmanic District No. 2.
BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:
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PUBLISHER'S AFFIDAVIT

State of Indiana)
) ss:
Allen County)

Personally appeared before me, a notary public in and for said county and state, the undersigned CIndy GIllenwater who, being duly sworn, says that he/she is Clerk of the The Journal-Gazette newspaper of general circulation printed and published in the English language in the (city) (town) of Fort Wayne, IN in state and county aforesaid, and that the printed matter attached hereto is a true copy, which was duly published in said paper for 2 time _____, the dates of publication being as follows:

10/28/91 11/4/91

Cindy Gillenwater

Subscribed and sworn to before me this 4th day of Nov 19 91

Shelley R LaRue

Notary Public Whitley County, IN
SHELLEY R. LARUE

My commission expires: March 3, 1994

Notary Public - Whitley County, IN
SHELLEY R. LARUE

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COUNCILMEMBER

Read the third time in full and motion by Long, seconded by Edmonds, and duly adopted, placed on its passage. PASSED by the following vote:

AYES: Nine
Bradbury, Burns, Edmonds, GiaQuinta, Henry, Long, Redd, Schmidt, Talarico
NAYS: None
ABSENT: None
ABSTAINED: None
DATED: 10-22-91

Sandra E. Kennedy
City Clerk

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ATTEST:
Sandra E. Kennedy
City Clerk

Samuel J. Talarico
Presiding Officer

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 23rd day of October, 1991, at the hour of 2:30 P.M., E.S.T.

Sandra E. Kennedy
City Clerk

Approved and signed by me this 23rd day of October, 1991, at the hour of 3:30 P.M., E.S.T.

Paul Helmke
Mayor

I, The Clerk of the City of Fort Wayne, Indiana do hereby certify that the above and foregoing is a full, true and complete copy of Annexation Ordinance No. X-06-91, passed by the Common Council on the 22nd day of October, 1991, and that said Ordinance was duly signed and approved by the Mayor on the 23rd day of October, 1991, and now remains on file and on record in my office.

WITNESS my hand, and the official seal of the City of Fort Wayne, Indiana, this 23rd day of October, 1991.

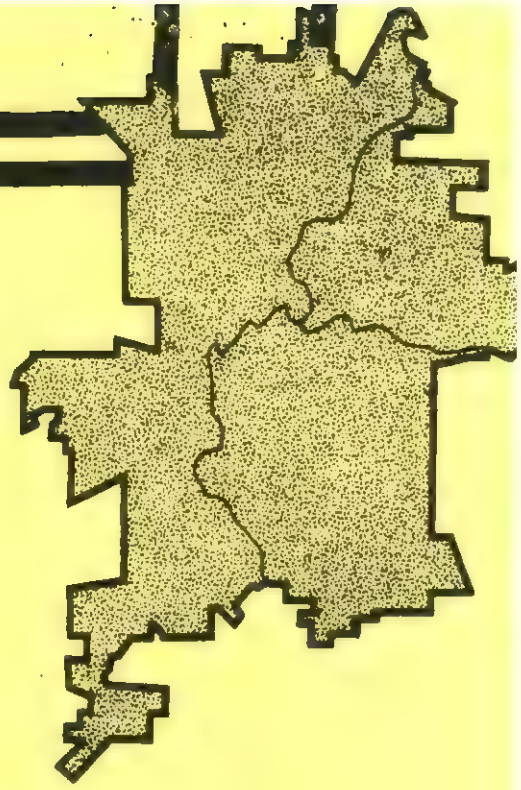
SANDRA E. KENNEDY, CITY CLERK

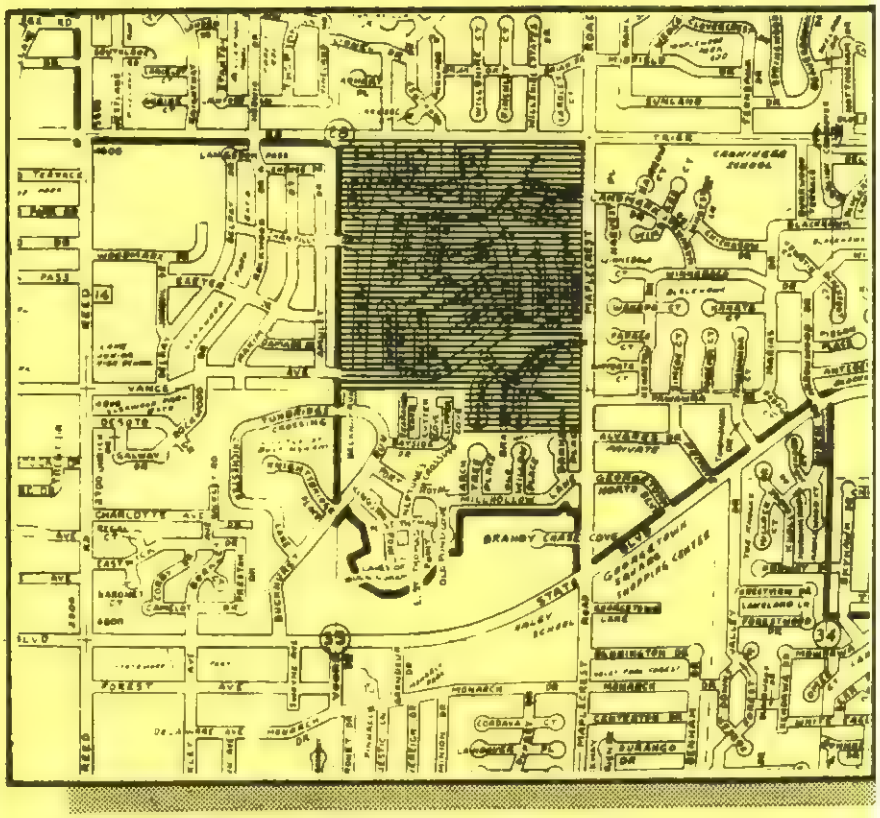
10--28/11--4

FISCAL PLAN

CITY OF FORT WAYNE
PAUL HELMKE, MAYOR

October 1991





Walden
Annexation
Amended

COMMUNITY & ECONOMIC
C&ED
DEVELOPMENT

ADMINISTRATION AND POLICY DIRECTION

Paul Helmke
Mayor
City of Fort Wayne

Greg Purcell
Director

Division of Community and Economic Development

Michael A. Sapp
Director of Planning

Fort Wayne City Plan Commission

Mel Smith, President
Yvonne Stam, Vice-President
Robert Hutner, Secretary
Mark Gensic
Charles Layton
David Long
John Shoaff
Steve Smith
Wil Smith

RESEARCH AND PREPARATION

Gary Stair, Senior Planner
Rick Kunkle, Planner II
Nancy Townsend, Planner I

INTRODUCTION

Since its inception, the City of Fort Wayne has been annexing land adjacent to its corporate limits. The Walden Annexation is a logical continuance of this policy.

This Fiscal Plan, which is required by State Annexation Law, explains why the Walden Annexation area meets the state law requirements for annexation. Also, this plan gives basic data regarding the area, describes the services which will be furnished to the area upon annexation by the City, and summarizes the fiscal impact of annexation upon the City.

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SECTION ONE

BASIC DATA

A. LOCATION

The area proposed for annexation is located east of the City of Fort Wayne and is bounded on the north by the south right of way of Trier Road, on the east by the west right-of-way of Maplecrest Road, on the south by the south line of Section 5 of Walden Addition and by the Indiana and Michigan Electric Company right-of-way, and on the west by the present City limits, in Section 28, Township 31 North, Range 13 East, in St. Joseph Township (See Figure 1).

B. SIZE

The Walden Annexation area contains approximately 174 acres.

C. POPULATION

Block statistics from the 1980 Census of Population and Housing shows that there are 3.37 persons per dwelling unit in the annexation area. Multiplying this figure by the 430 dwelling units in the annexation area, the population is calculated to be 1,449 persons.

D. BUILDINGS

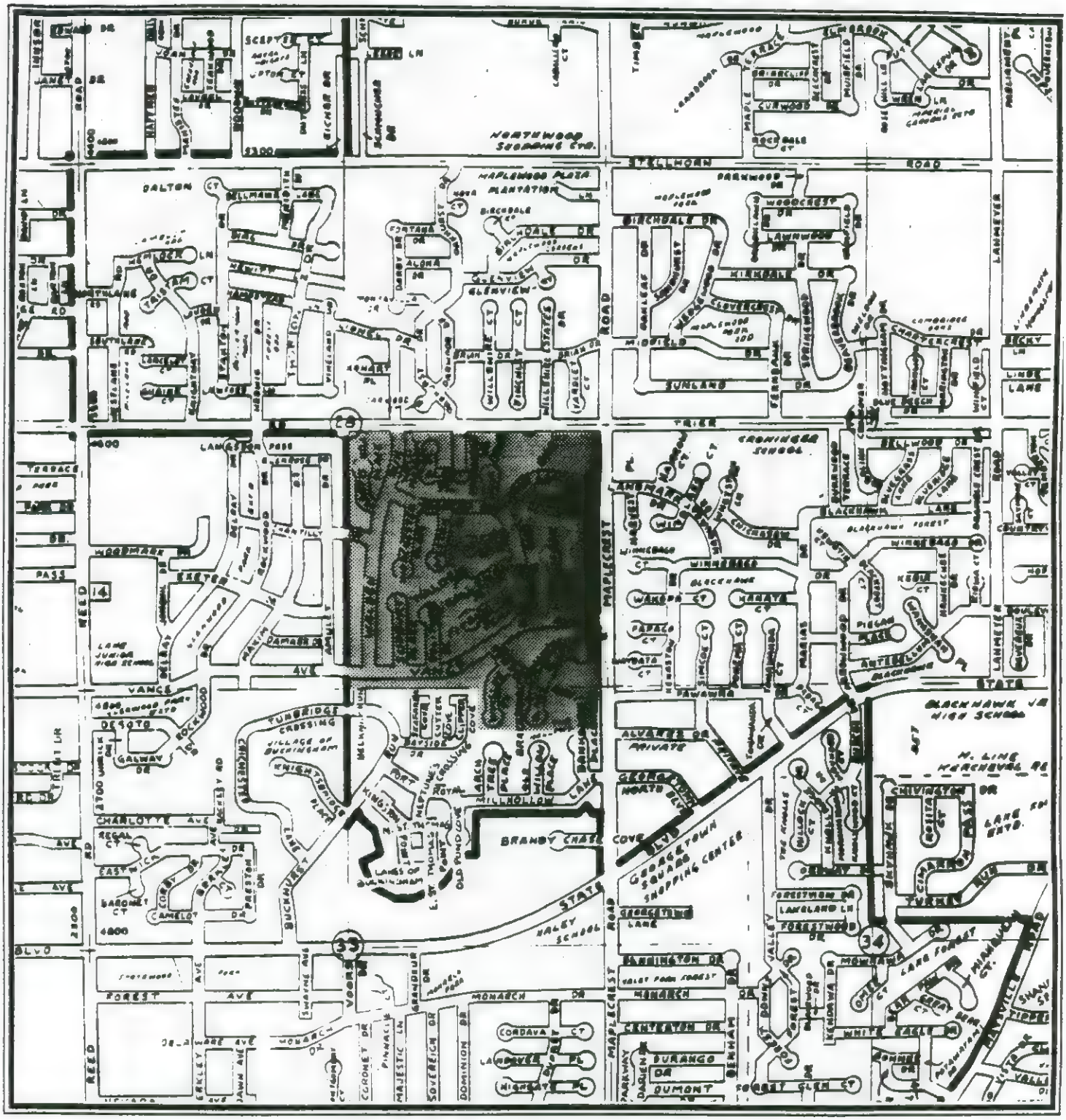
Single Family Residential	430 structures in good condition
Commercial	3 structures in good condition
Professional	3 structures in good condition
Institutional (church)	1 structure in good condition

E. PATTERNS OF LAND USE

	Acres	Percent
Residential	116	66.7%
Right of Way	28	16.1%
Recreational/Public	10	5.7%
Professional	7	4.0%
Institutional	6	3.5%
Commercial	4	2.3%
Vacant	3	1.7%
TOTAL	174	100.0%

FIGURE 1

WALDEN ANNEXATION



Location

F. ZONING

The Walden Annexation area currently contains five zoning classifications (See Figure 2). Upon annexation, this area will be under jurisdiction of the City Plan Commission and the zoning classifications will be as follows:

County Zoning Classification		City Zoning Classification	
RS1	Suburban Residential	R1	Single Family Residential
RSP2	Two-Family Dwelling	R3	Multiple Family Residence
RSP3	Multiple Family	R3	Multiple Family Residence
C1A	Professional Services	B1A	Limited Business District
C1(P)	Limited Planned Commercial	B1B	Limited Business District

G. TOPOGRAPHY

The Walden Annexation area primarily contains Pewamo loam and Morely loam soils with some clay. It has been determined by using U.S. Geological Survey Maps that the area has a low relief and that the general slope of the area is approximately 2 to 6 percent.

H. ASSESSMENT

$10,087,030

I. NET TAX RATE: (1990 payable 1991 rates)

Existing:	$4.8971	
After annexation:	$7.4713	
Increase:	$2.5742	(53 percent increase)

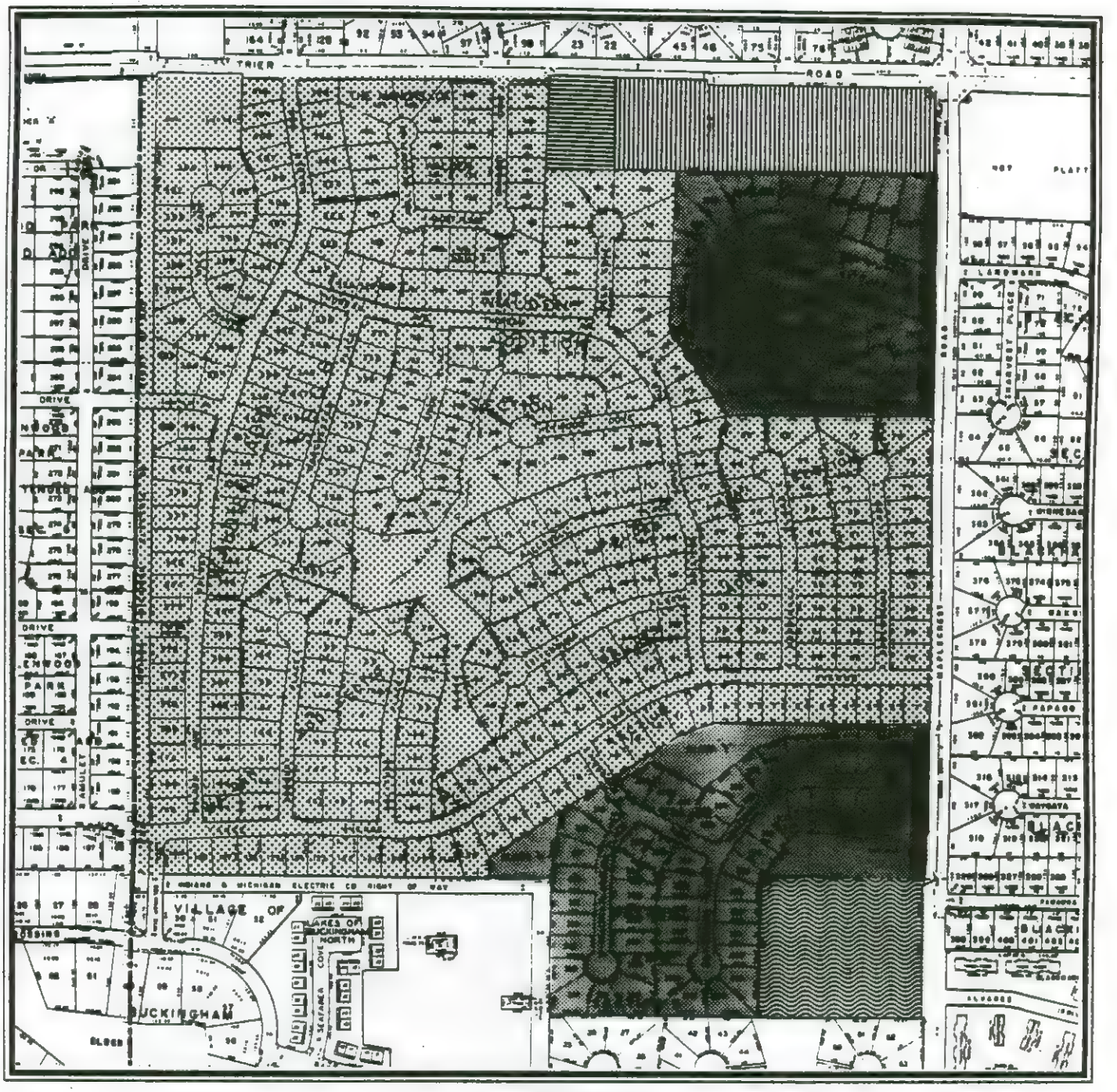
J. COUNCIL DISTRICT

The Walden Annexation area will be initially assigned to City Council District 2, subject to any later statutorily-required reapportionment.

K. SELECTED AREAS WITHIN CORPORATE BOUNDARIES WITH SIMILAR TOPOGRAPHY, PATTERNS OF LAND USE, AND POPULATION DENSITY

As the City of Fort Wayne has uniform service standards throughout its corporate boundaries, all areas of similar topography, patterns of land use, and population density receive the same level of service. A representative area within the City comparable in topography, patterns of land use, and population density to the Walden Annexation area is the Northcrest Addition Area (See Figure 3). On page six is a comparison of the two areas.

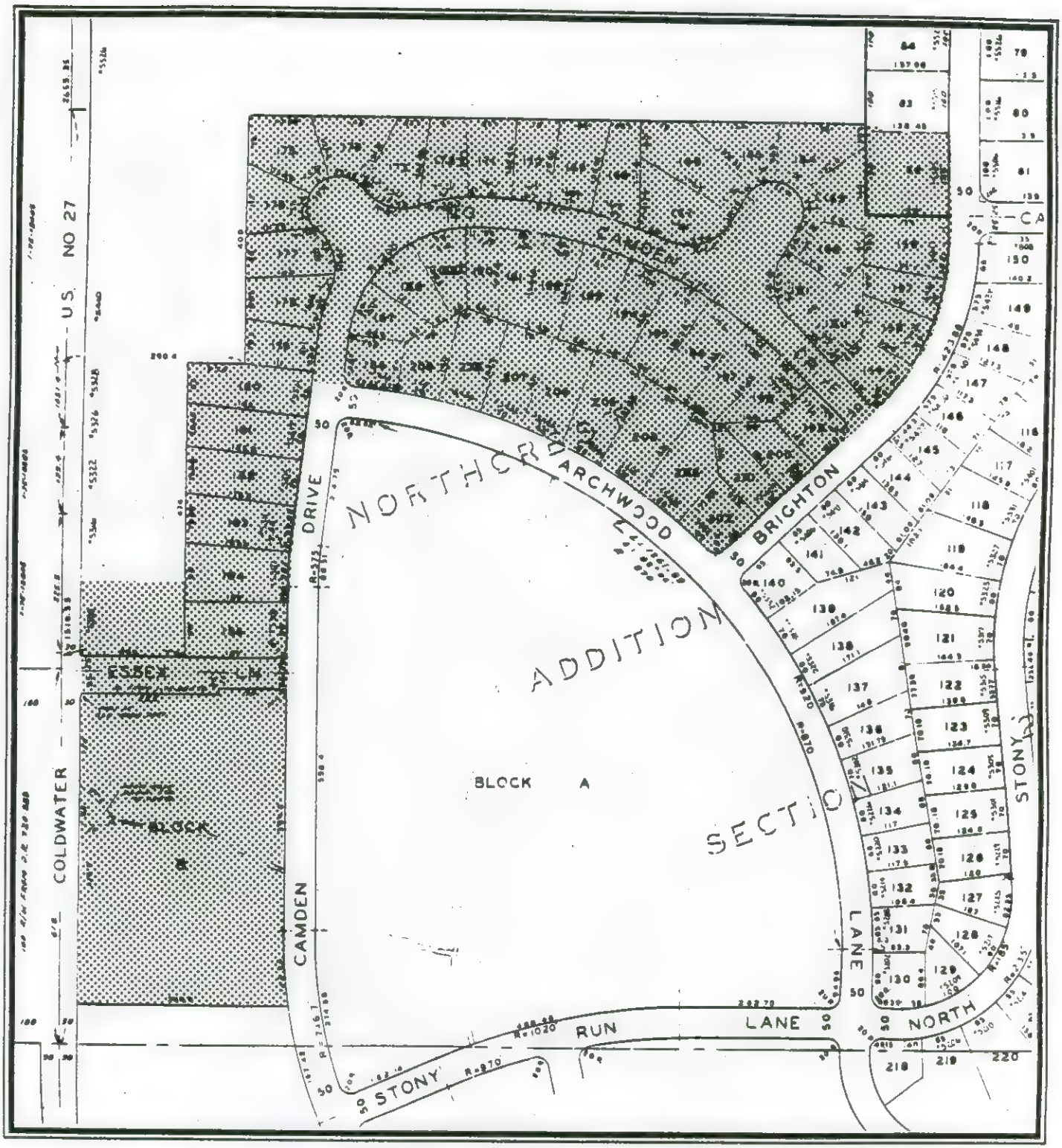
WALDEN ANNEXATION



Zoning

RS-1	Suburban Residential
RSP-2	Planned Duplex
RSP-3	Planned Multiple Family
C-1A(P)	Professional Services
C-1A	Professional Services

NORTHCREST ADDITION



Comparable Area

	Walden Annexation Area	Northcrest Addition Area
Topography	Low relief, loamy soil	Low relief, loamy soil
Patterns of Land Use	Residential and institutional with some commercial	Residential and institutional with some commercial
Population Density	8.4 persons per acre	7.6 persons per acre

No areas within the City with similar topography, patterns of land use, and population density as the Walden Annexation area are receiving services higher in standard or greater in scope than those services promised the Walden Annexation area.

SECTION TWO

THE COMPREHENSIVE ANNEXATION PROGRAM

The annexation of the Walden area is part of a larger comprehensive annexation program prepared by the Department of Community Development and Planning, which was promulgated in a report in 1975 and which was subsequently updated in 1976. The Annexation Policy and Program Study was the culmination of a year and a half of extensive study and is used as a policy guide for the City's annexation program. The report recommends that "all urban land contiguous to the City limits should become part of the City" as should "all non-urban land required to complement the annexation of urban land and provide the ability to control and manage urban growth". Because the Walden area met this criteria in 1975-76, the report identified it as part of a larger area which was recommended for annexation.

SECTION THREE

STATE LAW REQUIREMENTS

A. INTRODUCTION

When pursuing an annexation, a municipality must ensure that the proposed annexation is in accordance with the state law requirements as set forth in IC 36-4-3. The statute mandates that the courts accept the annexation if the area meets either of the following criteria:

1. The boundaries of the annexation area must be at least one-eighth (12.5 percent) contiguous to the corporate limits, and the area must meet one of the following conditions:

   a. Have a population density of at least three persons per acre; or
   b. Be zoned for commercial, business, or industrial uses; or
   c. Be at least 60 percent subdivided; or

2. The boundaries of the annexation area must be at least one-forth (25 percent) contiguous to the corporate limits, and the area must be needed and can be used by the municipality for its development in the reasonably near future.

In either case, the municipality must also prepare a written Fiscal Plan for providing services to be furnished to the annexed territory, together with the methods for financing such services. The Walden Annexation meets the first set of criteria which have been established to determine the validity of annexations. The remainder of the section will be devoted to explaining how this annexation meets the one-eighth contiguous and the following conditions.

B. One-Eighth Contiguous

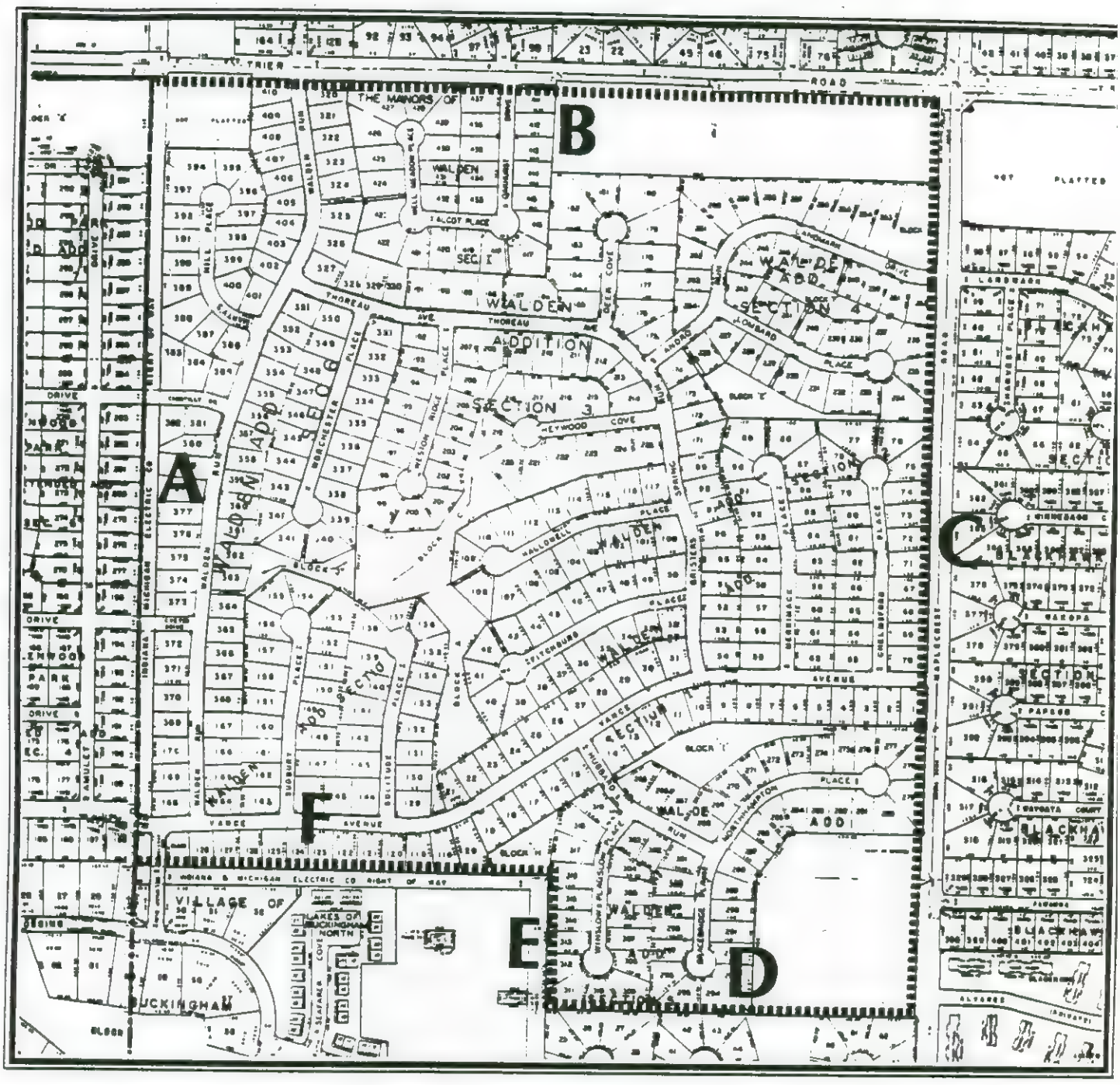
The Walden Annexation area meets the first requirement in that it is at least one-eighth (12.5 percent) contiguous to the City (23.2%). It also meets two of the following conditions, having a population density of more than 3 persons per acre (8.4 persons per acre) and being over 60 percent subdivided (66.3%).

C. CONCLUSION

The Walden Annexation Area should be annexed into the City of Fort Wayne because it satisfies the requirements that have been established by the State legislature: the annexation area is more than one-eighth contiguous to the City of Fort Wayne and has a population density of more than 3 persons per acre and is more than 60 percent subdivided.

FIGURE 4

WALDEN ANNEXATION



Contiguity

CONTIGUOUS		NON-CONTIGUOUS	
A	2650'	B	2600'
		C	3100'
		D	1250'
		E	450'
		F	1350'
	2650' (23.2%)		8750' (76.8%)

SECTION FOUR

MUNICIPAL SERVICES

This section of the Fiscal Plan forecasts the costs and methods of financing services for the Walden Annexation Area. The plan also describes how and when the City plans to extend the services of those improvements which are non-capital and capital in nature. The following section demonstrates how the City will satisfy the requirements of Indiana State Law in provision of services and financing of same in an equitable manner.

As required by state law, the annexation area will receive planned services of non-capital nature in a manner equivalent in standard and scope to those non-capital services provided to areas within the corporate boundaries that have similar topography, patterns of land use, and population density. In addition, the annexation area will receive services of a capital improvement nature in the same manner as those services provided to areas within the corporate boundaries that have similar topography, patterns of land use, and population density.

All services both of a non-capital nature and of a capital improvement nature described in subsequent subsections of the Municipal Services Section will be provided to the Walden Annexation area in a manner equivalent in standard and scope to those capital and non-capital services provided to areas within the corporate boundaries that have similar topography, patterns of land use, and population density, including but not limited to the Northcrest Addition Area.

A. <u>POLICE DEPARTMENT</u>

The services provided by the Fort Wayne Police Department include the prevention of crime, the detection and apprehension of criminal offenders, assistance for those who cannot care for themselves or who are in danger of physical harm, resolution of day-to-day conflicts among family, friends, and neighbors, and the creation and maintenance of a feeling of security in the community. The Police Department is involved in legal work and protection of constitutional rights. Lastly, the Police Department performs traffic control, promotes civil order and provides educational and technical assistance in the area of crime prevention and neighborhood services.

Police District #3 will be expanded to cover the Walden Annexation area upon annexation. The Police Department keeps records on the amount of personnel and equipment necessary for the City's annexation program, and has determined that additional

personnel are not required for this particular annexation.

The cost to provide protection to the annexation area will be $110 per year. This cost is based on a patrolman's average hourly rate of $11.64 multiplied by an estimated 45 minutes spent per call. This amount is then multiplied by the estimated number of calls (12 per year) for service to this area. This total, which equals $105, is the direct personnel cost. A small non-personnel cost of 5 percent is then added to the above total. This gives the overall cost of $110 annually to service the annexation area. Funding for police services in the annexation area will be derived primarily from local property taxes through the General Fund.

Capital Costs:	$ 0
Estimated Annual Operating Costs:	$ 110

B. FIRE DEPARTMENT

The Fort Wayne Fire Department will be responsible for providing fire protection services to the Walden Annexation Area immediately upon annexation. The services provided include fire protection and suppression, emergency rescue, fire prevention, and fire inspections. Primary response will come from Station 14 located at 3400 Reed Road. The response time from Station 14 to the annexation area is approximately 1 to 3 minutes. One Class A pumper and one emergency medical car are located at this station. Back-up response will come from Station 10 located at 1245 East State.

The annexation of the Walden area will not require a new fire station nor will it require additional personnel or equipment. For the year 1989, the cost per run was approximately $920, which represents the cost per run for the operation of the total department. The estimated number of runs into this area is 7 per year. The only other additional expenses are expected to be operating costs, including gasoline, postage, and photography. These operating costs are considered to be negligible since the annexation area represents only a small fraction of the total area serviced by the City. Funding for this increment in operating costs will come from the Fire Department's budget through the General Fund.

CAPITAL COSTS:	$ 0
ESTIMATED ANNUAL OPERATING COSTS:	$6,440

C. EMERGENCY MEDICAL SERVICE (EMS)

At the present time, Three Rivers Ambulance Authority is the only provider of ambulance service to city residents. Persons in the Walden Annexation Area are currently receiving full advanced life support ambulance service provided by the TRAA and will continue to do so upon annexation.

A number of ambulances are stationed throughout the City 24 hours a day. Upon receiving a request for service from the annexation area, the ambulance closest to the area will be dispatched to the annexation area. For some emergencies, such as heart attacks, the Fort Wayne Fire Department will provide extra assistance. Primary assistance will come from Station 14. Secondary assistance from Fire Department will come from Station 10. The Fire Department trains a number of its personnel so that each fire station has an emergency medical technician. Therefore, if needed, firemen are able to administer medical treatment to residents before the ambulance arrives.

The method of financing emergency medical services is based on user fees. The charges for ambulance service are shown below:

TABLE 1

1. $120 plus $5 per loaded mile for non-emergency transfers scheduled 24 hours in advance.
2. $170 plus $5 per loaded mile for non-scheduled non-emergency transfers
3. $380 plus $7.50 per loaded mile for emergencies for all City and non-City residents.

This method of financing permits service to be extended to the annexation area with its existing budget and no additional manpower or equipment will be needed to service the annexation area.

ESTIMATED ANNUAL COST: $0

D. SOLID WASTE DISPOSAL

Upon annexation, Fort Wayne will provide residential garbage collection to the Walden Annexation Area. Currently, this service is provided to residential property owners at no cost. In the event that charges are established, charges for the Walden area will be equivalent in standard and scope to those areas within the corporate boundaries that have similar topography, patterns of land use and population density. The City presently contracts with Waste Management of Fort Wayne to supply this service.

According to the contract agreement, the City is charged a tonnage cost of $45.01 for solid waste pick-up. This cost amounts to approximately $54 per household, per year, for this service. Consequently, annexation of 430 residences in the Walden Annexation area will cost $23,200 per year. Solid waste collection will be financed by the City's Garbage Disposal Fund which comes from the General Fund.

CAPITAL COSTS: $ 0
ESTIMATED ANNUAL COST: $23,200

E. TRAFFIC CONTROL

The City's Traffic Engineering Department will assume responsibility for traffic control in the annexation area immediately upon the effective date of annexation. Some of the services that can be provided by the department are surveys and investigations of traffic conditions and problems. The department also provides installation and maintenance of traffic control devices such as stop lights, control signs, and fire alarm systems.

The City's Traffic Engineering Department will not require any additional personnel to perform its services in the Walden Annexation area. Capital and labor costs will be approximately $2,164 for the installations of signs in the area.

TABLE 2
STREET SIGNAGE COSTS

TYPE	SIZE	QUANTITY	COST	TOTAL COSTS
Street Name	30" x 6"	27	$49.90	$1,347.30
Posts	12' 2 LB	27	11.80	318.60
LABOR				498.15
TOTAL MATERIAL AND LABOR:				$2,164.05

Funding sources for these services will come from real estate taxes and Motor Vehicle Highway (MVH) funds.

CAPITAL COSTS:	$2,164
ESTIMATED ANNUAL COST:	$ 0

F. STREETS AND ROADS

The incorporation of the Walden Annexation Area will add .50 miles of arterial streets and 3.09 miles of residential streets to the City. The City of Fort Wayne Street Department is responsible for the general maintenance of the City's streets and roads. General maintenance includes snow and ice removal and surface maintenance. The Street Engineering Department will provide engineering services and construction supervision for all streets, alleys, and sidewalks that will be constructed within the proposed annexation area. The provision of these services to the annexation area will not require any additional personnel or equipment.

The average cost of general street maintenance is $5,912 per mile of street per year, so the annexation will cost the City approximately $21,224 a year in street maintenance costs. The source of funding for street maintenance is the Street Department

budget which is composed of funds from the Motor Vehicle Highway (MVH) program. The Street Engineering Department funds come from MVH, Federal Aid Urban (FAU), and Local Arterial Roads and Streets (LARS) programs.

CAPITAL COSTS:	$ 0
ESTIMATED ANNUAL COST:	$21,224

G. STREET LIGHTING

It is the goal of the City of Fort Wayne Street Lighting Department to light every unlit intersection within the City limits, to reduce night accidents, facilitate traffic flow, aid police protection, and inspire community spirit and growth. Therefore, the City will place street lights at 15 intersections in the annexation area. The City will install Town & Country fixtures which closely resemble the existing ornamental fixtures in the area.

The City will also purchase and assume all costs for the 43 existing lights located within the public right-of-way upon the effective date of annexation.

The City will pay for the construction costs of Town & Country lighting. These capital costs will be funded from the General Fund. Operating costs are paid by the City through its regular departmental budget. Additional mid-block lighting must be petitioned for by the residents involved, per State Statute.

It is assumed that the fifteen additional street lights will be constructed in the third year and that the operating costs will be computed as an annual operating cost from that year on. The cost per ornamental light is $1,300 and will be installed at no extra cost to the residents in the Walden Addition.

CAPITAL COSTS:	$19,500
ESTIMATED ANNUAL COST:	$ 1,777 (years one - three)
	$ 580 (after three years)

H. PARKS AND RECREATION

Residents of the Walden Annexation Area presently have access to city park facilities such as swimming pools, baseball diamonds, indoor and outdoor skating, golf courses, picnic facilities, etc. Therefore, no new park will need to be developed for the Walden Annexation Area. Residents will be in close proximity to Shoaff Park, a 169 acre community park.

CAPITAL COSTS:	$0
ESTIMATED ANNUAL COST:	$0

I. WATER

The Fort Wayne Water Utility is presently serving the annexation area. The extension of water services to individual developments will be considered once the property owners in the area petition for such service.

CAPITAL COSTS:	$0
ESTIMATED ANNUAL COST:	$0

J. FIRE HYDRANTS

The City pays the Fort Wayne Water Utility $221 annually for each fire hydrant located within the City. Since the annexation area contains 40 fire hydrants, the City will pay the Utility $8,840 a year after the area is annexed into the City. This money will be taken from the General Fund.

Capital Costs:	$ 0
Estimated Annual Cost:	$8,840

K. SANITARY SEWER

The Fort Wayne Department of Water Pollution Control (WPC) presently provides sanitary sewers to the annexation area. The Water Pollution Control Department has the capability to extend sanitary sewers within the annexation area but will be considered only upon petition by the concerned property owners.

CAPITAL COSTS:	$0
ESTIMATED ANNUAL COST:	$0

L. STORM SEWERS

Upon annexation, the Department of Water Pollution Control will consider storm sewer installation upon petition by the concerned property owners of the area. The City will provide engineering services for such a project. Emergency and routine maintenance of public drainage will be the responsibility of the City's Sewer Maintenance Departments after annexation. Certain storm drainage improvements may be funded from the City's Storm Water Management Program.

CAPITAL COSTS:	$0
ESTIMATED ANNUAL COST:	$0

M. ANIMAL CONTROL

The Walden Annexation area is located within the north district of the Animal Control Department. Currently, the north district is not yet at capacity. Therefore, costs would be negligible to provide this service to the area.

CAPITAL COST:	$0
ESTIMATED ANNUAL COSTS:	$0

N. ADMINISTRATIVE SERVICES

All administrative functions of the City will be available to the Walden Annexation Area immediately upon the date of annexation. These services include, but are not limited to, the Law Department, the City Plan Commission, the Mayor's Office, the Board of Works, the Metropolitan Human Relations Department, the City Clerk's Office, the Citizen's Advocate Office, etc. General administration includes all of the regulatory and program functions of the various City departments. When the area is annexed, City departments will be notified and will expand their jurisdictional areas accordingly.

CAPITAL COSTS:	$0
ESTIMATED ANNUAL COST:	$0

SECTION FIVE

PLAN FOR HIRING GOVERNMENTAL EMPLOYEES DISPLACED BY ANNEXATION

It is not anticipated that due to the annexation of the Walden area, any governmental employees will be eliminated from other governmental agencies. However, if any governmental employee is displaced as a result of this annexation and makes application with the City of Fort Wayne for employment within thirty days after displacement, such employee will be treated as if the employee were a City employee on "lay-off" status for purposes of hiring for any vacant position similar to the government position from which the individual was displaced.

SECTION SIX

FINANCIAL SUMMARY AND RECOMMENDATION

The purpose of this section is to project the revenues and expenditures from the proposed Walden Annexation. This section also provides a five-year summary of the expenditures compared to the revenues.

A. REVENUES

Property taxes are the main source of revenue to be received from the Walden Annexation Area. Property taxes are computed from the gross amount of assessed valuation in the area and can be obtained from the Office of the St. Joseph Township Assessor. The formula for computing tax revenue is shown in the following table:

TABLE 2

Tax Revenue Formula

$$\frac{V-E}{100} \quad (T) = TR$$

WHERE:
V = Assessed Valuation
E = Home Mortgage Exemption
T = City Tax Rate
TR = Tax Return

The total assessed valuation of the proposed Walden Annexation is $10,087,030. The home mortgage exemption is deducted from this total. There are 430 dwelling units within this annexation area and it is assumed that each one is eligible for the $1,000 exemption mentioned above. The total taxable assessed valuation of the annexation area becomes $9,657,030 after the calculation is made. Property tax revenue for 1991 can then be determined by applying the Fort Wayne/St. Joseph Municipal tax rate (3.2533) to this figure giving a total property tax revenue of $314,171. Table 3 details the components of this tax rate. The annexation area will receive City services for 10 months in 1992. Therefore, the tax revenue for 1993 is pro-rated. The total property tax revenue for 1993 would be $277,754. Using a 3 percent rate of inflation, the property tax revenue for 1994, the first full year of property tax revenue would be $343,303. A portion of this revenue would be supplied from the State Property Tax Relief Fund.

This annexation will also enable the City to receive additional money from the Motor Vehicle Highway (MVH) and from the Local Arterial Roads and Streets (LARS) Funds. This is because these funds are allocated according to street miles. In 1989 the City received $5,070 per street mile from the MVH Fund and $2,433 from the LARS Fund. The annexation area will add 3.59 miles to the City's street system. Therefore, the City will receive an additional $18,201 from MVH and an additional $8,734 from LARS because of the Walden Annexation.

TABLE 3

Taxing District Rate

Corporation General	$1.4877
Corporation Debt Service	.3286
Firemen Pension	.1400
Policemen Pension	.2247
Sanitary Officers Pension	.0141
Fire	.6960
Park General	.3532
Redevelopment General	.0090
	$3.2533

In addition to property taxes, the City receives revenues from the Community Development Block Grant, the Cigarette Tax, the County Option Income Tax (COIT), and the Alcoholic Beverage Tax. Some of these funds are based in part on the City's population and some are based on the tax levy. Since population is only one element of a very complex distribution formula, the direct contribution of the Walden Annexation cannot be calculated. Still, most of these funds will increase with city population increases.

B. EXPENDITURES

Expenditures which were reported in the section on Municipal Services are summarized in Table 4. Capital costs are one time expenditures, while operating costs are continuing expenses. Since the needs of the annexation area must be treated equally with the needs of other similar areas in Fort Wayne, capital improvement projects , such as construction of streets, curbs, and sidewalks, must follow routine city procedures which often require petitioning.

On the following page, Table 4 details the costs that will be incurred by each department upon the annexation of the Walden Area.

TABLE 4

EXPENDITURES

DEPARTMENTS	CAPITAL COSTS	OPERATING COSTS
Police Department	$ 0	$ 110
Fire Department	0	6,440
EMS	0	0
Solid Waste Disposal	0	23,220
Traffic Control	2,164	0
Streets	0	21,224
Street Lighting	19,500	1,777
Parks	0	0
Water	0	0
Fire Hydrants	0	8,840
Sanitary Sewer	0	0
Storm Sewer	0	0
Animal Control	0	0
Administrative Functions	0	0
TOTALS	$21,664	$61,611

C. FIVE YEAR SUMMARY

The Five Year Summary shows the projected expenditures compared with the tax revenues expected in the Walden Annexation area for the first five years after it is incorporated into the City of Fort Wayne.

The summary automatically includes for each of the five years a 7 percent inflation factor for municipal expenditures, and a 3 percent inflation factor for City revenues.

Property tax revenue from the annexation area will not be collected until 1993. Assuming the area is annexed in February of 1992, assessment will not occur until March of 1992, with revenues being collected in 1993. Since revenues are not collected for one year after the effective date of annexation, the City will experience a loss of $57,241 in 1992. On the following page, Table 5 details the revenues minus the expenses for the Walden area over the next 5 year period.

TABLE 5

REVENUES MINUS EXPENSES

	EXPENDITURES	PROPERTY TAX REVENUE	MVH& LARS	BALANCE
1992	$ 57,241			$ -57,241
1993	70,539	$ 277,754	$ 26,935	289,700
1994	100,076	343,303	26,935	270,162
1995	81,520	353,602	26,935	299,017
1996	87,226	364,210	26,935	303,919
	$396,602	$1,338,869	$107,740	$1,050,007

D. RECOMMENDATIONS

This Fiscal Plan, which meets the state law requirements that a fiscal plan be prepared, shows that the Walden Annexation is in accordance with the applicable state statutes. Therefore, it is recommended that after the passage of the annexation ordinance and its approval by the Mayor, this area should be annexed by the City of Fort Wayne on February 28, 1992.

TABLE 6
ST. JOSEPH TOWNSHIP TAX RATES
1989 PAYABLE 1990

		ST. JOSEPH TRANSIT		FORT WAYNE ST. JOSEPH	
	St. Fair Board	.0035		.0035	
STATE	St. Forestry	.0065		.0065	
	Welfare HCI	.0508		.0508	
	Welfare Administration	.0713		.0713	
	TOTAL STATE		.1321		.1321
	County General	.7529		.7529	
COUNTY	County Welfare	.1238		.1238	
	County Health	.0654		.0654	
	Cumulative Bridge	.0375		.0375	
	County Bonds	.0910		.0910	
	Reassessment	.0300		.0300	
	Welfare Med. Ast. Ward	.0059		.0059	
	Cumulative Capital Dev.	.0700		.0700	
	TOTAL COUNTY		1.1765		1.1765
	Township EMS				
TOWNSHIP	Fire Debt				
	Township General	.0029		.0029	
	Poor Relief	.0089		.0089	
	Fire Protection	.0590			
	Township Recreation	.0006			
	TOTAL TOWNSHIP		.0714		.0124
	School General	2.6181		2.6181	
SCHOOLS	Debt Service	.0288		.0288	
	Art Institute	.0050		.0050	
	School Transportation	.4186		.4186	
	Captial Projects	.6215		.6215	
	Racial Balance	.2000		.2000	
	TOTAL SCHOOL		3.8920		3.8920
AIRPORT	Airport General	.0772		.0772	
AUTHORITY	Airport Debt	.0168		.0168	
	TOTAL AIRPORT		.0940		.0940
	Library General	.2944		.2944	
LIBRARY	Library Debt	.0352		.0352	
	TOTAL LIBRARY		.3296		.3296
	PTC General	.1025		.1025	
PTC	PTC Debt	.0293		.0293	
	TOTAL PTC		.1318		.1318

TABLE 6
ST. JOSEPH TOWNSHIP TAX RATE
1989 PAYABLE 1990

		ST. JOSEPH TRANSIT	FORT WAYNE ST. JOSEPH
CITY AND SPECIAL TAXING DISTRICT	Corporation General		1.4877
	Redevelopment General		.0090
	Corp. Debt Service		.3286
	Firemen Pension		.1400
	Policemen Pension		.2247
	Park General		.3532
	Sanitary Officers Pen.		.0141
	Fire		.6960
	TOTAL CITY AND SPECIAL DISTRICT	0.00	3.2533
	TOTAL TAX RATE	5.8274	9.0217
	REPLACEMENT CREDIT	.159639	.171850
	NET TAX RATE	4.897120	7.471321

Walden Legal Description

Part of the Southeast Quarter of Section 28, Township 31 North, Range 13 East and part of the Northeast Quarter of Section 33, Township 31 North, Range 13 East, Allen County, Indiana more particularly described as follows:

Beginning at the intersection of the south right of way line of Trier Road and the east line of the Southeast Quarter of Section 28, Township 31 North, Range 13 East; thence East along the south right of way line of said Trier Road to the west right of way line of Maplecrest Road; thence South along the west right of way line of Maplecrest Road to a point 450 feet south of the north line of the Northeast Quarter of Section 33, Township 31 North, Range 13 East, said point being on the North line of "The Hollows" Subdivision, Section 1 as recorded in Plat Book 41, Pages 31-35 in the Office of the Recorder of Allen County, Indiana; thence west along the north line of said Hollows subdivision (said north line also being the southerly line and its easterly extension of Walden Addition, Section 5 as recorded in Plat Book 38, Pages 44-47) to a point on the easterly line of an Indiana and Michigan Power Company right of way (said point also being the northwest corner of Lot 25 in said Hollows subdivision); thence north along said Indiana and Michigan easterly right of way line to the South line of the Southeast Quarter of said Section 28; thence West along the south line of said Southeast Quarter of Section 28 (said south line also being the south line of Walden Addition, Section 2 as recorded in Plat Book 36, Pages 20-24, in the Office of the Recorder) to the East line of the Southeast Quarter of said Section 28; thence North along said East line of said Southeast Quarter to the Point of Beginning containing 174 Acres more or less.

Prepared by:

Mark L. Gensic
Registered Land Surveyor No.S-0409

Date: February 5, 1991